

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For President, Inc.;
and Republican National Committee,
Petitioners

v.

No. 602 M.D. 2020

Kathy Boockvar, in her capacity
as Secretary of the Commonwealth of
Pennsylvania; Adams County Board of
Elections; Allegheny County Board of
Elections; Armstrong County Board of
Elections; Beaver County Board of
Elections; Bedford County Board of
Elections; Berks County Board of
Elections; Blair County Board of
Elections; Bradford County Board of
Elections; Bucks County Board of
Elections; Butler County Board of
Elections; Cambria County Board of
Elections; Cameron County Board of
Elections; Carbon County Board of
Elections; Centre County Board of
Elections; Chester County Board of
Elections; Clarion County Board of
Elections; Clearfield County Board of
Elections; Clinton County Board of
Elections; Columbia County Board of
Elections; Crawford County Board of
Elections; Cumberland County Board of
Elections; Dauphin County Board of
Elections; Delaware County Board of
Elections; Elk County Board of
Elections; Erie County Board of
Elections; Fayette County Board of
Elections; Forest County Board of
Elections; Franklin County Board of
Elections; Fulton County Board of
Elections; Greene County Board of
Elections; Huntingdon County Board of
Elections; Indiana County Board of
Elections; Jefferson County Board of

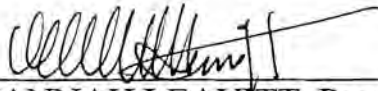
Elections; Juniata County Board of	:
Elections; Lackawanna County Board of	:
Elections; Lancaster County Board of	:
Elections; Lawrence County Board of	:
Elections; Lebanon County Board of	:
Elections; Lehigh County Board of	:
Elections; Luzerne County Board of	:
Elections; Lycoming County Board of	:
Elections; McKean County Board of	:
Elections; Mercer County Board of	:
Elections; Mifflin County Board of	:
Elections; Monroe County Board of	:
Elections; Montgomery County Board of	:
Elections; Montour County Board of	:
Elections; Northampton County Board of	:
Elections; Northumberland County Board of	:
Elections; Perry County Board of	:
Elections; Philadelphia County Board of	:
Elections; Pike County Board of	:
Elections; Potter County Board of	:
Elections; Schuylkill County Board of	:
Elections; Snyder County Board of	:
Elections; Somerset County Board of	:
Elections; Sullivan County Board of	:
Elections; Susquehanna County Board of	:
Elections; Tioga County Board of	:
Elections; Union County Board of	:
Elections; Venango County Board of	:
Elections; Warren County Board of	:
Elections; Washington County Board of	:
Elections; Wayne County Board of	:
Elections; Westmoreland County Board of	:
Elections; Wyoming County Board of	:
Elections; and York County Board of	:
Elections;	:
Respondents	:

ORDER

AND NOW this 12th day of November, 2020, upon consideration of
Petitioners' Petition for Review in the Nature of a Complaint in Equity, and the

memoranda of law filed by the parties and the proposed intervenor-respondent, the Court concludes that Respondent Kathy Boockvar, in her official capacity as Secretary of the Commonwealth, lacked statutory authority¹ to issue the November 1, 2020, guidance to Respondents County Boards of Elections insofar as that guidance purported to change the deadline in Section 1308(h) of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §3146.8(h), for certain electors to verify proof of identification, based on Secretary Boockvar's interpretation and application of the Pennsylvania Supreme Court's decision in *Pennsylvania Democratic Party v. Boockvar*, __ A.3d __ (Pa., No. 133 MM 2020, filed September 17, 2020).²

Accordingly, the Court hereby ORDERS that Respondents County Boards of Elections are enjoined from counting any ballots that have been segregated pursuant to paragraph 1 of this Court's order dated November 5, 2020, granting a special injunction.



MARY HANNAH LEAVITT, President Judge

¹ See Section 703 of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, 71 P.S. §243 (powers and duties of Secretary of Commonwealth); Section 201 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §2621 (same).

² In *Pennsylvania Democratic Party*, the Pennsylvania Supreme Court exercised its extraordinary jurisdiction to adopt a three-day extension of the received-by deadline for absentee and mail-in ballots for the 2020 General Election, thereby allowing Respondents County Boards of Elections to count all such ballots that were postmarked by 8:00 p.m. on Election Day, Tuesday, November 3, 2020, and received by the County Boards no later than 5:00 p.m. Friday, November 6, 2020. Secretary Boockvar's interpretation of the Supreme Court's decision as requiring a corresponding three-day extension of the proof of identification deadline highlights the cascading effect that altering one deadline in the Election Code can have on other statutory deadlines. Mindful of this, the petitioners in *Pennsylvania Democratic Party*, i.e., the Pennsylvania Democratic Party and several Democratic elected officials and candidates, asserted that the Supreme Court "has the authority to alter [post-election] deadlines to be consistent with the relief granted" in that case. *Pennsylvania Democratic Party*, __ A.3d at __, slip op. at 26. The petitioners' observation persuades the Court that an amendment of the Supreme Court's order is necessary to achieve Secretary Boockvar's objective.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DONALD J. TRUMP FOR
PRESIDENT, INC.; and,
REPUBLICAN NATIONAL
COMMITTEE,

Petitioners,

v.

KATHY BOOCKVAR, in her capacity) No. 602 MD 2020
as Secretary of the Commonwealth of)
Pennsylvania; ADAMS COUNTY)
BOARD OF ELECTIONS;)
ALLEGHENY COUNTY BOARD OF)
ELECTIONS; ARMSTRONG)
COUNTY BOARD OF ELECTIONS;)
BEAVER COUNTY BOARD OF)
ELECTIONS; BEDFORD COUNTY)
BOARD OF ELECTIONS; BERKS)
COUNTY BOARD OF ELECTIONS;)
BLAIR COUNTY BOARD OF)
ELECTIONS; BRADFORD COUNTY)
BOARD OF ELECTIONS; BUCKS)
COUNTY BOARD OF ELECTIONS;)
BUTLER COUNTY BOARD OF)
ELECTIONS; CAMBRIA COUNTY)
BOARD OF ELECTIONS; CAMERON)
COUNTY BOARD OF ELECTIONS;)
CARBON COUNTY BOARD OF)
ELECTIONS; CENTRE COUNTY)
BOARD OF ELECTIONS; CHESTER)
COUNTY BOARD OF ELECTIONS;)
CLARION COUNTY BOARD OF)
ELECTIONS; CLEARFIELD)
COUNTY BOARD OF ELECTIONS;)
CLINTON COUNTY BOARD OF)
ELECTIONS; COLUMBIA COUNTY)
BOARD OF ELECTIONS;)

CRAWFORD COUNTY BOARD OF)
ELECTIONS; CUMBERLAND)
COUNTY BOARD OF ELECTIONS;)
DAUPHIN COUNTY BOARD OF)
ELECTIONS; DELAWARE COUNTY)
BOARD OF ELECTIONS; ELK)
COUNTY BOARD OF ELECTIONS;)
ERIE COUNTY BOARD OF)
ELECTIONS; FAYETTE COUNTY)
BOARD OF ELECTIONS; FOREST)
COUNTY BOARD OF ELECTIONS;)
FRANKLIN COUNTY BOARD OF)
ELECTIONS; FULTON COUNTY)
BOARD OF ELECTIONS; GREENE)
COUNTY BOARD OF ELECTIONS;)
HUNTINGDON COUNTY BOARD)
OF ELECTIONS; INDIANA COUNTY)
BOARD OF ELECTIONS;)
JEFFERSON COUNTY BOARD OF)
ELECTIONS; JUNIATA COUNTY)
BOARD OF ELECTIONS;)
LACKAWANNA COUNTY BOARD)
OF ELECTIONS; LANCASTER)
COUNTY BOARD OF ELECTIONS;)
LAWRENCE COUNTY BOARD OF)
ELECTIONS; LEBANON COUNTY)
BOARD OF ELECTIONS; LEHIGH)
COUNTY BOARD OF ELECTIONS;)
LUZERNE COUNTY BOARD OF)
ELECTIONS; LYCOMING COUNTY)
BOARD OF ELECTIONS; MCKEAN)
COUNTY BOARD OF ELECTIONS;)
MERCER COUNTY BOARD OF)
ELECTIONS; MIFFLIN COUNTY)
BOARD OF ELECTIONS; MONROE)
COUNTY BOARD OF ELECTIONS;)
MONTGOMERY COUNTY BOARD)
OF ELECTIONS; MONTOUR)
COUNTY BOARD OF ELECTIONS;)
NORTHAMPTON COUNTY BOARD)

OF ELECTIONS;)
NORTHUMBERLAND COUNTY)
BOARD OF ELECTIONS; PERRY)
COUNTY BOARD OF ELECTIONS;)
PHILADELPHIA COUNTY BOARD)
OF ELECTIONS; PIKE COUNTY)
BOARD OF ELECTIONS; POTTER)
COUNTY BOARD OF ELECTIONS;)
SCHUYLKILL COUNTY BOARD OF)
ELECTIONS; SNYDER COUNTY)
BOARD OF ELECTIONS;)
SOMERSET COUNTY BOARD OF)
ELECTIONS; SULLIVAN COUNTY)
BOARD OF ELECTIONS;)
SUSQUEHANNA COUNTY BOARD)
OF ELECTIONS; TIOGA COUNTY)
BOARD OF ELECTIONS; UNION)
COUNTY BOARD OF ELECTIONS;)
VENANGO COUNTY BOARD OF)
ELECTIONS; WARREN COUNTY)
BOARD OF ELECTIONS;)
WASHINGTON COUNTY BOARD)
OF ELECTIONS; WAYNE COUNTY)
BOARD OF ELECTIONS;)
WESTMORELAND COUNTY)
BOARD OF ELECTIONS; WYOMING)
COUNTY BOARD OF ELECTIONS;)
and YORK COUNTY BOARD OF)
ELECTIONS,)
)
Respondents.)
)

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Application
for Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction

within twenty (20) days, or within the time set by order of the court, or service hereof
or a Judgment may be entered against you.

Respectfully Submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Petitioners,

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KATHY BOOCKVAR, et al.,

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) No. 602 MD 2020

**APPLICATION FOR SPECIAL RELIEF IN THE FORM OF A
SPECIAL, PRELIMINARY, AND/OR PERMANENT INJUNCTION**

Pursuant to Rule 1532 of the Pennsylvania Rules of Appellate Procedure, Petitioners, Donald J. Trump for President, Inc. and Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully move for special relief in the form of a preliminary, special, and/or permanent injunction enjoining Respondents, Kathy Boockvar, as the Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and the 67 County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), from canvassing and counting absentee and mail-in ballots who fail to provide proof of identification that can be verified by the county boards of elections by the sixth (6th) calendar day following the November 3, 2020 General Election as mandated by Section 1308(h)(3) of the Pennsylvania Election Code, 25 P.S. § 3146.8(h)(3).

INTRODUCTION

1. On November 1, 2020, Secretary Boockvar published and delivered to all 67 of the County Elections Boards written “guidance” stating that an absentee or mail-in ballot of an elector whose proof of identification was not received or could not be verified at the time the ballot was delivered could be counted if the elector provides the requisite proof of identification to the county elections board by “the sixth calendar day following *the canvassing, or on or before Thursday, November 12.*” See “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020,” dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as “November 1, 2020 Guidance.”)

2. The Secretary’s November 1, 2020 Guidance is contrary to the clear and unambiguous language of Election Code Section 1308(h)(3) which mandates the last date for the elector’s provision of identification as *Monday, November 9, 2020*, which is the sixth calendar following the November 3, 2020 General Election. See 25 P.S. § 3146.8(h)(3) (“(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified: ... (3)

If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.”). *See also* 25 P.S. § 3146.8(h)(2).

3. As neither Secretary Boockvar nor the County Elections Boards have any authority to re-write the Election Code or administer the November 3, 2020 General Election in a manner that is inconsistent and/or directly contrary to the Election Code’s clear and unambiguous mandates, Petitioners seek special, preliminary, and/or permanent injunctive relief to enjoin Respondents’ attempted extension of the Election Section 1308’s six calendar day statutory period.

4. Without an injunction, Petitioners will be irreparably harmed, and they have no adequate remedy at law.

5. Accordingly, Petitioners pray that this Court enjoin the Respondents from violating the Election Code, Section 1308’s six calendar day statutory period and from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

BACKGROUND

6. Contemporaneously with the filing of this Application, Petitioners have filed a Petition for Review, a true and correct copy of which is attached hereto as Exhibit “A.”

7. On November 3, 2020, a General Election was held in which several candidates for federal and state offices were on the ballot, including without limitation the reelection campaign of Donald J. Trump, the 45th President of the United States of America and the Republican nominee for the office of the President of the United States of America (hereinafter, "President Trump").

8. On November 1, 2020, two days before the November 3, 2020 General Election, Secretary Boockvar sent to every county elections board in the Commonwealth of Pennsylvania written guidance titled "CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020." A true and correct copy of the November 1, 2020 is attached to the Petition for Review as Exhibit "1" and is available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

9. The November 1, 2020 Guidance serves as an update to guidance that Secretary Boockvar and the Pennsylvania Department of State issued on October 28, 2020, concerning the segregation and canvassing of absentee and mail-in ballots cast in the November 3, 2020 General Election.

10. In the November 1, 2020 Guidance, Secretary Boockvar told the County Elections Boards that:

...

Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board ***by the sixth calendar day following the canvassing, or on or before Thursday, November 12.***

...

See November 1, 2020 Guidance, p. 3 (emphasis added).

11. Section 1308(h) of the Pennsylvania Election Code, codified at 25 P.S.

§ 3146.8(h), provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

...

(2) If the proof of identification is received and verified ***prior to the sixth calendar day following the election,*** then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election,*** then the absentee ballot or mail-in ballot ***shall not be counted.***

See 25 P.S. § 3146.8(h)(2) & (3) (emphasis added).

12. Section 102(f) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(f), defines the word “election” to mean “any general, municipal, special, or primary election, unless otherwise specified.” 25 P.S. § 2602(f).

13. Moreover, Section 102(h) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(h), defines the word “general election” to mean “the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” 25 P.S. § 2602(h).

14. Article VII, Section 2 of the Pennsylvania Constitution defines a “general election” to be “[t]he general election ... held biennially on the Tuesday next following the first Monday of November in each even-numbered year” unless the General Assembly, by two-thirds consent of all members of each House, fixes a different day. Pa. Const. Art. VII, § 2.

15. The November 3, 2020 General Election constitutes an “election” and “general election” as those terms are defined in Section 102(f) and (h) of the Pennsylvania Election Code, and Article VII, Section 2 of the Pennsylvania Constitution.

16. The sixth calendar day following the November 3, 2020 General Election is Sunday, November 8, 2020.

16. Section 103(e) of the Election Code provides:

In determining or reckoning any period of time mentioned
in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

See 25 P.S. § 2603(e).

17. Pursuant to Section 2603(e) of the Election Code, because the sixth calendar day following the November 3, 2020 General Election falls on Sunday, November 8, 2020, the sixth calendar period under Election Code Section 1308(h)(3) expires on Monday, November 9, 2020.

18. The clear, plain, and unambiguous language of Section 1308(h)(3) of the Election Code provides that if an absentee or mail-in voter elector who is required to provide proof of identification that can be verified by the county elections fails to provide that proof by Monday, November 9, 2020, “then the absentee ballot or mail-in ballot shall not be counted.” 25 P.S. § 3146.8(h)(3).

19. The November 1, 2020 Guidance is in clear contravention of 25 P.S. § 3146.8(h)(3) because it allows for the counting of absentee or mail-in ballots for electors who provide their required proof of identification to the county elections boards on a day beyond Section 3146.8(h)(3)’s sixth calendar day statutory period.

INJUNCTIVE RELIEF

20. Petitioners move this Court for an Order declaring Secretary Boockvar's guidance to be invalid and enjoining the County Elections Boards from canvassing and counting any absentee or mail-in ballot where an elector who is required to provide proof of identification that can be verified by the county board of elections fails to do so on or before Monday, November 9, 2020.

21. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction "in the interest of justice and consistent with the usages and principles of law."

22. The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 439 (Pa. Commw. Ct. 2004).

23. Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

24. For the reasons stated above and in Petitioners' Petition for Review, Petitioners meet all of the elements for the entering of a preliminary injunction in this case.

WHEREFORE, for all of the foregoing reasons and those alleged in the Petition for Review, Petitioners respectfully request that this Honorable Court grant

their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020 in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Jeremy A. Mercer (PA #86480)

Carolyn B. McGee (PA #208815)

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Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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v.

KATHY BOOCKVAR, et al.,

Respondents.

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) No. 602 MD 2020

[PROPOSED] ORDER

Upon consideration of Petitioners' Application for Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction under Pa. R.A.P. 1532 prohibiting Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020, in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020;

It appearing to the Court that Petitioners are likely to succeed on the merits of their action, that they will suffer irreparable injury if the requested relief is not issued, that Respondents will not be harmed if the request relief is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Petitioners' Application is hereby GRANTED;

ORDERED that Respondents and anyone acting on their behalf are enjoined from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020; and,

ORDERED that Respondents and anyone acting on their behalf are enjoined from counting any absentee and mail-in ballots cast by voters whose proof of identification was not received and verified by November 9, 2020;

Date: _____

Time: _____

Judge of the Commonwealth Court of
Pennsylvania

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

PA Supreme Court No. 49520

EXHIBIT A

DONALD J. TRUMP FOR
PRESIDENT, INC.; and
REPUBLICAN NATIONAL
COMMITTEE,

V.

KATHY BOOCKVAR, in her capacity) No. _____ MD 2020
as Secretary of the Commonwealth of)
Pennsylvania; ADAMS COUNTY)
BOARD OF ELECTIONS;)
ALLEGHENY COUNTY BOARD OF)
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COUNTY BOARD OF ELECTIONS;)
ERIE COUNTY BOARD OF)
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BOARD OF ELECTIONS; FOREST)
COUNTY BOARD OF ELECTIONS;)
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BOARD OF ELECTIONS; GREENE)
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JEFFERSON COUNTY BOARD OF)
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BOARD OF ELECTIONS;)
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COUNTY BOARD OF ELECTIONS;)
LAWRENCE COUNTY BOARD OF)
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BOARD OF ELECTIONS; LEHIGH)
COUNTY BOARD OF ELECTIONS;)
LUZERNE COUNTY BOARD OF)
ELECTIONS; LYCOMING COUNTY)
BOARD OF ELECTIONS; MCKEAN)
COUNTY BOARD OF ELECTIONS;)
MERCER COUNTY BOARD OF)
ELECTIONS; MIFFLIN COUNTY)
BOARD OF ELECTIONS; MONROE)
COUNTY BOARD OF ELECTIONS;)
MONTGOMERY COUNTY BOARD)
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COUNTY BOARD OF ELECTIONS;)
NORTHAMPTON COUNTY BOARD)

OF ELECTIONS;)
 NORTHUMBERLAND COUNTY)
 BOARD OF ELECTIONS; PERRY)
 COUNTY BOARD OF ELECTIONS;)
 PHILADELPHIA COUNTY BOARD)
 OF ELECTIONS; PIKE COUNTY)
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 OF ELECTIONS; TIOGA COUNTY)
 BOARD OF ELECTIONS; UNION)
 COUNTY BOARD OF ELECTIONS;)
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 ELECTIONS; WARREN COUNTY)
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 OF ELECTIONS; WAYNE COUNTY)
 BOARD OF ELECTIONS;)
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 BOARD OF ELECTIONS; WYOMING)
 COUNTY BOARD OF ELECTIONS;)
 and YORK COUNTY BOARD OF)
 ELECTIONS,)
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 Respondents.)
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NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition for Review and Notice are served, or within any other timeframe as ordered by the Court, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth

against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Petitioners. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

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Petitioners,

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No. _____ MD 2020

**PETITION FOR REVIEW
IN THE NATURE OF A COMPLAINT IN EQUITY**

Petitioners, Donald J. Trump for President, Inc., and the Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully file this Petition for Declaratory and Injunctive Relief against Respondent Kathy Boockvar in her official capacity as Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and each of the 67 Pennsylvania County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), and in support thereof, aver as follows.

INTRODUCTION

1. On Sunday, November 1, 2020, two days before the date of the general election on November 3, 2020 and before pre-canvassing was scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day on November 3, 2020 Respondent, Secretary Kathy Boockvar published and delivered yet one more

guidance letter contradicting the Election Code. This new flagrant attack on the legislature's authority was sent to every county in the Commonwealth of Pennsylvania. See "CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020," dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as "November 1, 2020 Guidance", a true and correct copy of which is attached hereto as **Exhibit 1**).

2. In this guidance, Secretary Boockvar re-writes the Election Code by *sua sponte* resetting the deadline for absentee and mail-in voters to provide missing proof of identification. She unilaterally extends it the "sixth day following the canvassing, or on or before Thursday, November 12". See **Exhibit 1** at p. 3.

3. However, Section 1308(h) of Pennsylvania's Election Code, codified at 25 P.S. § 3146.8(h), requires that if a voter's identification is not received and verified "by the sixth day following *the election*", those ballots "*shall* not be counted." See 25 P.S. § 3146.8(h)(2) & (3) (emphases added).

4. As it pertains to the November 3, 2020 General Election, this deadline is Monday, November 9, 2020. The Secretary's unlawful guidance seeks to extend this by three days to November 12, 2020.

5. For these reasons, Petitioners seek declaratory relief that the November 1, 2020 guidance is in contravention of the clear requirements of Section 1308(h) of the Election Code, and preliminary, special, and/or permanent injunctive relief directing the County Boards of Elections to adhere to these provisions of the Election Code Section 1308(h) and not count those absentee and mail-in ballots of voters whose identification is not received and verified by November 9, 2020.

STATEMENT OF JURISDICTION

6. This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1).

PARTIES SEEKING RELIEF

7. Petitioner, Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the ongoing General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), codified at 25 P.S. §§ 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States).

As a political committee for a federal candidate, the Trump Campaign has Article III standing to bring this action. *See, e.g., Orloski v. Davis*, 564 F. Supp. 526, 530-31 (M.D. Pa. 1983). *See also Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587-588 (5th Cir. 2006) (“after the primary election, a candidate steps into the shoes of his party, and their interests are identical.”); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

8. Petitioner, Republican National Committee (hereinafter, the “RNC”) is a national political committee that leads the Republican Party of the United States (hereinafter, the “Republican Party”). The RNC works to elect Republican candidates to state and federal offices throughout the United States, including in the Commonwealth of Pennsylvania, and it organizes and operates the Republican National Convention through which its members nominate their candidates for President and Vice President of the United States. The Republican Party includes over thirty million (30,000,000) registered Republicans in all fifty (50) states, the District of Columbia, and the U.S. territories, and constitutes a “political party” as that term is defined in Election Code Section 801, 25 P.S. § 2831. The RNC brings this action for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3,

2020 General Election in the Commonwealth of Pennsylvania. As a political committee, the RNC has Article III standing to bring this action. *See, e.g., Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6th Cir. 2004); *Pa. Democratic Party v. Republican Party of Pa.*, 2016 U.S. Dist. LEXIS 153944, at *8-9 (E.D. Pa. Nov. 7, 2016); *Democratic Exec. Comm. v. Detzner*, 347 F. Supp. 3d 1017, 1025 (N.D. Fl. 2018); *Orloski*, 564 F. Supp. at 530-31.

9. Respondent, Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As Secretary, she is Pennsylvania's Chief Elections Officer and a member of the Governor's Executive Board. The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar as they relate to the administration of elections. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, codified at 25 P.S. § 2621. Under the Election Code, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. *Perzel*, 870 A.2d at 764; *Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928). Secretary Boockvar is sued in her official capacity.

10. Adams County Board of Elections, Allegheny County Board of Elections, Armstrong County Board of Elections, Beaver County Board of Elections,

Bedford County Board of Elections, Berks County Board of Elections, Blair County Board of Elections, Bradford County Board of Elections, Bucks County Board of Elections, Butler County Board of Elections, Cambria County Board of Elections, Cameron County Board of Elections, Carbon County Board of Elections, Centre County Board of Elections, Chester County Board of Elections, Clarion County Board of Elections, Clearfield County Board of Elections, Clinton County Board of Elections, Columbia County Board of Elections, Crawford County Board of Elections, Cumberland County Board of Elections, Dauphin County Board of Elections, Delaware County Board of Elections, Elk County Board of Elections, Erie County Board of Elections, Fayette County Board of Elections, Forest County Board of Elections, Franklin County Board of Elections, Fulton County Board of Elections, Greene County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Jefferson County Board of Elections, Juniata County Board of Elections, Lackawanna County Board of Elections, Lancaster County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Lehigh County Board of Elections, Luzerne County Board of Elections, Lycoming County Board of Elections, McKean County Board of Elections, Mercer County Board of Elections, Mifflin County Board of Elections, Monroe County Board of Elections, Montgomery County Board of Elections, Montour County Board of Elections, Northampton County Board of Elections, Northumberland County

Board of Elections, Perry County Board of Elections, Philadelphia County Board of Elections, Pike County Board of Elections, Potter County Board of Elections, Schuylkill County Board of Elections, Snyder County Board of Elections, Somerset County Board of Elections, Sullivan County Board of Elections, Susquehanna County Board of Elections, Tioga County Board of Elections, Union County Board of Elections, Venango County Board of Elections, Warren County Board of Elections, Washington County Board of Elections, Wayne County Board of Elections, Westmoreland County Board of Elections, Wyoming County Board of Elections, and York County Board of Elections (collectively hereinafter, the “County Election Boards”), are the county boards of elections in and for each county of the Commonwealth of Pennsylvania as provided by Election Code Section 301, codified at 25 P.S. § 2641. The County Election Boards “have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]” *Id.* at § 2641(a). The County Election Boards’ general powers and duties are set forth in Election Code Section 302, codified at 25 P.S. § 2642. The County Election Boards are executive agencies that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion

FACTUAL BACKGROUND

11. Yesterday, the November 3, 2020 General Election was held across the United States, with many states having already declared the winners in their jurisdictions.

12. However, in Pennsylvania, we are days away from being able to declare the results of the election. This is largely the result of the fact that absentee and mail-in ballots are still being pre-canvassed and counted. Once the pre-canvassing process is completed for those ballots received by the County Boards of Election prior to Election Day on November 3, 2020, the Counties will then begin their canvassing process.

13. While the Counties continue their pre-canvass and canvassing processes today and into the following days, absentee and mail-in ballots are still currently being received and, under the Pennsylvania Supreme Court's September 17, 2020 decision, issued in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020),¹ and may be received until 5 p.m. on Friday, November 6, 2020, if postmarked by November 3, 2020.

¹ The Pennsylvania Supreme Court's decision as it relates to the 3-day extension of the absentee and mail-in ballot return date is pending before the United States Supreme Court via a petition for certiorari filed on October 23, 2020. See *Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania*, Case No. 20-542 (U.S.).

14. Just two days before Election Day on Sunday, November 1, 2020, Secretary Boockvar issued directions to each of the 67 County Boards of Elections stating, in relevant part:

[I]f county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board *by the sixth calendar day following the canvassing, or on or before Thursday, November 12.*

See **Exhibit 1**, at p. 3 (emphasis added).

15. These instructions directing the Counties to afford absentee and mail-in voters extra time – 3 days beyond November 9, 2020, – to cure their failure to provide proof of identification is in direct contravention of Pennsylvania’s Election Code.

16. Section 1308 of Pennsylvania’s Election Code, codified section 25 P.S. § 3146.8(h), clearly and mandatorily provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) (Deleted by amendment).

(2) If the proof of identification is received and verified *prior to the sixth calendar day following the election*, then the county board of elections shall canvass the

absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections *by the sixth calendar day following the election*, then the absentee ballot or mail-in ballot *shall not be counted*.

25 P.S. § 3146.8(h) (emphases added).

17. Subparts (2) and (3) of Election Code Section 1308(h) provides for a six calendar day statutory period in which voters may satisfy proof of their identity and is triggered by and expressly tied to election day. *See id.* (stating “following the election”). These provisions are clear, unequivocal and mandatory.

18. The word “election” “shall mean any general, municipal, special or primary election, unless otherwise specified.” *See* Election Code Section 102(f), 25 P.S. § 2602(f).

19. The words “general election” “shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” *See* Election Code Section 102(h), 25 P.S. § 2602(h).

20. There can be no dispute that the “election,” as defined by Election Section 102(f) for the 2020 General Election was Tuesday, November 3, 2020.

21. Election Code Section 103(e), codified at 25 P.S. § 2603(e), states in full:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

25 P.S. § 2603(e)

22. Thus, the six calendar day statutory period “following the election” ends on Monday, November 9, 2020.

23. However, Secretary Boockvar’s November 1, 2020 guidance illegally extends the six calendar day statutory period by another three days (for a total of a nine day period) until November 12 by tying the commencement of the period to “following the canvassing” instead of “following the election.”

24. There is nothing in Pennsylvania’s Election Code or elsewhere under Pennsylvania law that permits Secretary Boockvar to rewrite our laws in this fashion.

25. The November 1, 2020 guidance violates the canvassing provisions of the Election Code, specifically Section 1308 codified at Section 3146.8(h).

26. If Secretary Boockvar’s guidance is allowed to continue, it will undoubtedly create a high risk of jeopardizing the integrity of the November 3, 2020 General Election by allowing for the counting and canvassing of absentee and mail-in ballots by electors who fail to provide by November 9, 2020, the requisite proof of identification, as mandated by the General Assembly.

27. Critically, the November 1, 2020 guidance will further delay the 67 County Boards of Elections' abilities to finish the canvassing process and tabulation of votes and cause the tabulation of ballots which, under the electoral scheme enacted by the General Assembly, are determined "shall not be counted." *See* 25 P.S. § 3146.8(h)(3).

28. While the rest of the country will know which candidates won in each of the other states, Pennsylvanians may be forced to wait yet another several days for the outcome of the election – all because of guidance that directly violates the Election Code.

COUNT I
DECLARATORY AND SPECIAL INJUNCTIVE RELIEF

29. Petitioners incorporate the foregoing paragraphs as if fully set forth at length.

30. Respondents have a duty to comply with the laws of the Commonwealth of Pennsylvania.

31. "The Commonwealth expects that all officials charged with the duty of guarding and computing the votes of qualified electors will obey the letter and spirit of the applicable law in respect to that duty; only by such obedience to the law will the possibility of fraud be reduced to a minimum." *Appeal of Simon*, 353 Pa. 14, 46 A.2d 243, 245 (1946). The failure of the Respondents to comply with the plain

requirements of Pennsylvania's Election Code entitles Petitioners to the relief they seek herein.

32. Petitioners have no adequate remedy at law to redress the harm as a result of Respondents' violation of the Pennsylvania Election Code.

33. Injunctive relief is necessary to prevent the substantial injury and immediate and irreparable harm that Petitioners would suffer if Respondents are permitted to violate the laws of the Commonwealth of Pennsylvania, specifically Section 1308 of the Election, codified at 25 P.S. § 3146.8(h), by extending the six calendar statutory period three days to November 12.

34. A greater injury would occur in refusing the injunction than granting it because the Respondents are illegally and unilaterally extending the General Election in Pennsylvania by yet another 3 days until November 12, 2020 by allowing absentee and mail-in voters additional time beyond the six calendar day statutory period "following the election" to provide missing proof of identification.

35. Respondents' actions increase the risk of jeopardizing the integrity of the November 3, 2020 general election.

WHEREFORE, Petitioners respectfully request entry of declaratory and special injunctive and/or preliminary injunctive relief in their favor and against Respondents prohibiting Respondents from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 8,

2020 in direct contravention of the Pennsylvania Election Code, and/or from prohibiting the Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully Submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Jeremy A. Mercer (PA #86480)

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Counsel for Petitioners

ATTORNEY VERIFICATION

I, Ronald L. Hicks, Jr., am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

PA Supreme Court No. 49520

EXHIBIT 1



**CANVASSING SEGREGATED MAIL-IN AND CIVILIAN
ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON
TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON
FRIDAY, NOVEMBER 6, 2020**

Date: November 1, 2020

Version: 1.0

On October 28, 2020, the Department of State issued guidance related to the segregation of mail-in and civilian absentee ballots received by mail after 8:00 P.M. on Tuesday November 3, 2020 and before 5:00 P.M. on Friday, November 6, 2020. In doing so, the Department of State indicated it would update the county boards of elections on how to canvass those segregated ballots. That guidance follows:

1. All directions in the guidance issued on October 28, 2020 concerning the segregation and logging of ballots received during this defined post-election period continue to apply. Specifically, mail-in and civilian absentee ballots received by mail after 8:00 P.M. on November 3 and before 5:00 P.M. on November 6 shall be identified and segregated from all other voted ballots and shall be maintained, preserved and appropriately logged as directed in the October 28, 2020 guidance.
2. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the ballots are canvassed.
3. By statute, no challenges by authorized representatives or any third party are permitted during canvass of the mail-in and absentee ballots.
4. To facilitate transparency and ensure that all validly cast ballots are counted, it is critically important that county boards maintain accurate records of the disposition of ballots received during this period as directed below.

Canvass Procedures

- Guidance concerning mail-in and absentee ballots previously provided by the Department, including the guidance issued on August 19, 2020, September 11, 2020, and September 28, 2020, continues to apply unless otherwise specified herein.
- The county board of elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.
- The county board of elections shall examine the voter declaration on each envelope to ensure that it is executed and signed and verify that the voter's name appears on the approved list of mail-in and absentee voters.
- The county board of elections should set aside and should not open or count any of the following:
 - Ballots cast by any voter who died prior to the opening of the polls on November 3, 2020.
 - Ballots containing a postmark that is after November 3, 2020.
 - Ballots with a missing or illegible postmark containing a voter declaration that is dated after November 3, 2020.

- Ballots (whenever postmarked) received by mail after 5:00 P.M. on Friday, November 6, 2020.
- Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:
 - If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.
 - For ballots of voters whose applications were challenged prior to the challenge deadline (5:00 P.M. on Friday, October 30, 2020), those ballots should not be counted pending completion of the challenge procedure in the Election Code. Ballot applications can only be challenged on the basis that the applicant is not qualified to vote. Ballots associated with applications timely challenged on this basis must be placed in a secure, safe, and sealed container until the board of elections schedules a formal hearing on the challenged ballots. The time set for the hearing shall be within three (3) days after November 6. The hearing procedure shall comply with the Election Code and shall be the same procedure for challenged ballots received prior to 8:00 P.M. on Tuesday, November 3, 2020.
- Other than ballots falling into one of the categories set forth above, mail-in and civilian absentee ballots that comply with the Election Code and the Department's prior guidance shall be canvassed as follows:
 - Ballots with a postmark on or before November 3, 2020 are valid and must be counted.
 - Ballots that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, are presumed to have been mailed by Tuesday, November 3, 2020, and are valid and must be counted, unless a preponderance of the evidence demonstrates that the ballot was mailed after November 3, 2020.
 - County boards of elections are instructed to maintain separate counts for each of the following categories of ballots: (i) ballots with a postmark on or before November 3, 2020 which are counted; (ii) ballots without a postmark (or with an illegible postmark) which are presumed to have been mailed prior to Election Day and which are counted; and (iii) ballots without a postmark (or with an illegible postmark) which are determined by a preponderance of the evidence to have been mailed after Election Day and which are not counted.
- Consistent with the Department's prior guidance, county boards of elections are instructed to set aside any ballots that lack the inner secrecy envelope and any ballots in

secrecy envelopes that contain any text, mark, or symbol which reveals the identity of the voter, the voter's political affiliation, or the voter's candidate preference.

- The county boards of elections shall count, compute, and separately tally the ballots approved for canvassing. These separate ballot tallies shall distinguish between: (i) ballots counted with a postmark prior to November 3, 2020 and (ii) ballots counted with an illegible or no postmark that were presumed to have been mailed on or before November 3.
- Counties shall maintain in a safe and secure location all ballots and ballot envelopes that are canvassed pursuant to this guidance.

Version	Date	Description
1.0	11.1.2020	Initial document release

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For President, Inc.;
and Republican National Committee,
Petitioners

v.

No. 602 M.D. 2020

Kathy Boockvar, in her capacity
as Secretary of the Commonwealth of
Pennsylvania; Adams County Board of
Elections; Allegheny County Board of
Elections; Armstrong County Board of
Elections; Beaver County Board of
Elections; Bedford County Board of
Elections; Berks County Board of
Elections; Blair County Board of
Elections; Bradford County Board of
Elections; Bucks County Board of
Elections; Butler County Board of
Elections; Cambria County Board of
Elections; Cameron County Board of
Elections; Carbon County Board of
Elections; Centre County Board of
Elections; Chester County Board of
Elections; Clarion County Board of
Elections; Clearfield County Board of
Elections; Clinton County Board of
Elections; Columbia County Board of
Elections; Crawford County Board of
Elections; Cumberland County Board of
Elections; Dauphin County Board of
Elections; Delaware County Board of
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Elections; Greene County Board of
Elections; Huntingdon County Board of
Elections; Indiana County Board of
Elections; Jefferson County Board of

Elections; Juniata County Board of	:
Elections; Lackawanna County Board of	:
Elections; Lancaster County Board of	:
Elections; Lawrence County Board of	:
Elections; Lebanon County Board of	:
Elections; Lehigh County Board of	:
Elections; Luzerne County Board of	:
Elections; Lycoming County Board of	:
Elections; McKean County Board of	:
Elections; Mercer County Board of	:
Elections; Mifflin County Board of	:
Elections; Monroe County Board of	:
Elections; Montgomery County Board of	:
Elections; Montour County Board of	:
Elections; Northampton County Board of	:
Elections; Northumberland County Board of	:
Elections; Perry County Board of	:
Elections; Philadelphia County Board of	:
Elections; Pike County Board of	:
Elections; Potter County Board of	:
Elections; Schuylkill County Board of	:
Elections; Snyder County Board of	:
Elections; Somerset County Board of	:
Elections; Sullivan County Board of	:
Elections; Susquehanna County Board of	:
Elections; Tioga County Board of	:
Elections; Union County Board of	:
Elections; Venango County Board of	:
Elections; Warren County Board of	:
Elections; Washington County Board of	:
Elections; Wayne County Board of	:
Elections; Westmoreland County Board of	:
Elections; Wyoming County Board of	:
Elections; and York County Board of	:
Elections;	:
Respondents	:

ORDER

AND NOW this 12th day of November, upon consideration of the Petition for Leave to Intervene as Respondent by DNC Services Corp./Democratic National

Committee (collectively, DNC), it is ORDERED that the DNC is granted intervention for the limited purpose of participating in any appeal of this Court's final order dated November 12, 2020.



MARY HANNAH LEAVITT, President Judge

KATHY BOOCKVAR, in her capacity) No. _____ MD 2020
as Secretary of the Commonwealth of)
Pennsylvania; ADAMS COUNTY)
BOARD OF ELECTIONS;)
ALLEGHENY COUNTY BOARD OF)
ELECTIONS; ARMSTRONG)
COUNTY BOARD OF ELECTIONS;)
BEAVER COUNTY BOARD OF)
ELECTIONS; BEDFORD COUNTY)
BOARD OF ELECTIONS; BERKS)
COUNTY BOARD OF ELECTIONS;)
BLAIR COUNTY BOARD OF)
ELECTIONS; BRADFORD COUNTY)
BOARD OF ELECTIONS; BUCKS)
COUNTY BOARD OF ELECTIONS;)
BUTLER COUNTY BOARD OF)
ELECTIONS; CAMBRIA COUNTY)
BOARD OF ELECTIONS; CAMERON)
COUNTY BOARD OF ELECTIONS;)
CARBON COUNTY BOARD OF)
ELECTIONS; CENTRE COUNTY)
BOARD OF ELECTIONS; CHESTER)
COUNTY BOARD OF ELECTIONS;)
CLARION COUNTY BOARD OF)
ELECTIONS; CLEARFIELD)
COUNTY BOARD OF ELECTIONS;)
CLINTON COUNTY BOARD OF)
ELECTIONS; COLUMBIA COUNTY)
BOARD OF ELECTIONS;)

CRAWFORD COUNTY BOARD OF)
ELECTIONS; CUMBERLAND)
COUNTY BOARD OF ELECTIONS;)
DAUPHIN COUNTY BOARD OF)
ELECTIONS; DELAWARE COUNTY)
BOARD OF ELECTIONS; ELK)
COUNTY BOARD OF ELECTIONS;)
ERIE COUNTY BOARD OF)
ELECTIONS; FAYETTE COUNTY)
BOARD OF ELECTIONS; FOREST)
COUNTY BOARD OF ELECTIONS;)
FRANKLIN COUNTY BOARD OF)
ELECTIONS; FULTON COUNTY)
BOARD OF ELECTIONS; GREENE)
COUNTY BOARD OF ELECTIONS;)
HUNTINGDON COUNTY BOARD)
OF ELECTIONS; INDIANA COUNTY)
BOARD OF ELECTIONS;)
JEFFERSON COUNTY BOARD OF)
ELECTIONS; JUNIATA COUNTY)
BOARD OF ELECTIONS;)
LACKAWANNA COUNTY BOARD)
OF ELECTIONS; LANCASTER)
COUNTY BOARD OF ELECTIONS;)
LAWRENCE COUNTY BOARD OF)
ELECTIONS; LEBANON COUNTY)
BOARD OF ELECTIONS; LEHIGH)
COUNTY BOARD OF ELECTIONS;)
LUZERNE COUNTY BOARD OF)
ELECTIONS; LYCOMING COUNTY)
BOARD OF ELECTIONS; MCKEAN)
COUNTY BOARD OF ELECTIONS;)
MERCER COUNTY BOARD OF)
ELECTIONS; MIFFLIN COUNTY)
BOARD OF ELECTIONS; MONROE)
COUNTY BOARD OF ELECTIONS;)
MONTGOMERY COUNTY BOARD)
OF ELECTIONS; MONTOUR)
COUNTY BOARD OF ELECTIONS;)
NORTHAMPTON COUNTY BOARD)

OF ELECTIONS;)
NORTHUMBERLAND COUNTY)
BOARD OF ELECTIONS; PERRY)
COUNTY BOARD OF ELECTIONS;)
PHILADELPHIA COUNTY BOARD)
OF ELECTIONS; PIKE COUNTY)
BOARD OF ELECTIONS; POTTER)
COUNTY BOARD OF ELECTIONS;)
SCHUYLKILL COUNTY BOARD OF)
ELECTIONS; SNYDER COUNTY)
BOARD OF ELECTIONS;)
SOMERSET COUNTY BOARD OF)
ELECTIONS; SULLIVAN COUNTY)
BOARD OF ELECTIONS;)
SUSQUEHANNA COUNTY BOARD)
OF ELECTIONS; TIOGA COUNTY)
BOARD OF ELECTIONS; UNION)
COUNTY BOARD OF ELECTIONS;)
VENANGO COUNTY BOARD OF)
ELECTIONS; WARREN COUNTY)
BOARD OF ELECTIONS;)
WASHINGTON COUNTY BOARD)
OF ELECTIONS; WAYNE COUNTY)
BOARD OF ELECTIONS;)
WESTMORELAND COUNTY)
BOARD OF ELECTIONS; WYOMING)
COUNTY BOARD OF ELECTIONS;)
and YORK COUNTY BOARD OF)
ELECTIONS,)
)
Respondents.)
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NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition for Review and Notice are served, or within any other timeframe as ordered by the Court, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth

against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Petitioners. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DONALD J. TRUMP FOR)	
PRESIDENT, INC.; et al.,)	
)	
Petitioners,)	
)	
v.)	No. _____ MD 2020
)	
KATHY BOOCKVAR, et al.,)	
)	
Respondents.)	

**PETITION FOR REVIEW
IN THE NATURE OF A COMPLAINT IN EQUITY**

Petitioners, Donald J. Trump for President, Inc., and the Republican National Committee (hereinafter collectively referred to as “Petitioners”), respectfully file this Petition for Declaratory and Injunctive Relief against Respondent Kathy Boockvar in her official capacity as Secretary of the Commonwealth of Pennsylvania (hereinafter referred to as “Secretary Boockvar”), and each of the 67 Pennsylvania County Boards of Elections (hereinafter referred collectively with Secretary Boockvar as “Respondents”), and in support thereof, aver as follows.

INTRODUCTION

1. On Sunday, November 1, 2020, two days before the date of the general election on November 3, 2020 and before pre-canvassing was scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day on November 3, 2020 Respondent, Secretary Kathy Boockvar published and delivered yet one more

guidance letter contradicting the Election Code. This new flagrant attack on the legislature's authority was sent to every county in the Commonwealth of Pennsylvania. See "CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020," dated November 1, 2020, version 1.0 (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as "November 1, 2020 Guidance", a true and correct copy of which is attached hereto as **Exhibit 1**).

2. In this guidance, Secretary Boockvar re-writes the Election Code by *sua sponte* resetting the deadline for absentee and mail-in voters to provide missing proof of identification. She unilaterally extends it the "sixth day following the canvassing, or on or before Thursday, November 12". See **Exhibit 1** at p. 3.

3. However, Section 1308(h) of Pennsylvania's Election Code, codified at 25 P.S. § 3146.8(h), requires that if a voter's identification is not received and verified "by the sixth day following *the election*", those ballots "*shall* not be counted." See 25 P.S. § 3146.8(h)(2) & (3) (emphases added).

4. As it pertains to the November 3, 2020 General Election, this deadline is Monday, November 9, 2020. The Secretary's unlawful guidance seeks to extend this by three days to November 12, 2020.

5. For these reasons, Petitioners seek declaratory relief that the November 1, 2020 guidance is in contravention of the clear requirements of Section 1308(h) of the Election Code, and preliminary, special, and/or permanent injunctive relief directing the County Boards of Elections to adhere to these provisions of the Election Code Section 1308(h) and not count those absentee and mail-in ballots of voters whose identification is not received and verified by November 9, 2020.

STATEMENT OF JURISDICTION

6. This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1).

PARTIES SEEKING RELIEF

7. Petitioner, Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the ongoing General Election. The Trump Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), codified at 25 P.S. §§ 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States).

As a political committee for a federal candidate, the Trump Campaign has Article III standing to bring this action. *See, e.g., Orloski v. Davis*, 564 F. Supp. 526, 530-31 (M.D. Pa. 1983). *See also Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587-588 (5th Cir. 2006) (“after the primary election, a candidate steps into the shoes of his party, and their interests are identical.”); *In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

8. Petitioner, Republican National Committee (hereinafter, the “RNC”) is a national political committee that leads the Republican Party of the United States (hereinafter, the “Republican Party”). The RNC works to elect Republican candidates to state and federal offices throughout the United States, including in the Commonwealth of Pennsylvania, and it organizes and operates the Republican National Convention through which its members nominate their candidates for President and Vice President of the United States. The Republican Party includes over thirty million (30,000,000) registered Republicans in all fifty (50) states, the District of Columbia, and the U.S. territories, and constitutes a “political party” as that term is defined in Election Code Section 801, 25 P.S. § 2831. The RNC brings this action for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3,

2020 General Election in the Commonwealth of Pennsylvania. As a political committee, the RNC has Article III standing to bring this action. *See, e.g., Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6th Cir. 2004); *Pa. Democratic Party v. Republican Party of Pa.*, 2016 U.S. Dist. LEXIS 153944, at *8-9 (E.D. Pa. Nov. 7, 2016); *Democratic Exec. Comm. v. Detzner*, 347 F. Supp. 3d 1017, 1025 (N.D. Fl. 2018); *Orloski*, 564 F. Supp. at 530-31.

9. Respondent, Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As Secretary, she is Pennsylvania's Chief Elections Officer and a member of the Governor's Executive Board. The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar as they relate to the administration of elections. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, codified at 25 P.S. § 2621. Under the Election Code, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. *Perzel*, 870 A.2d at 764; *Hamilton v. Johnson*, 141 A. 846, 847 (Pa. 1928). Secretary Boockvar is sued in her official capacity.

10. Adams County Board of Elections, Allegheny County Board of Elections, Armstrong County Board of Elections, Beaver County Board of Elections,

Bedford County Board of Elections, Berks County Board of Elections, Blair County Board of Elections, Bradford County Board of Elections, Bucks County Board of Elections, Butler County Board of Elections, Cambria County Board of Elections, Cameron County Board of Elections, Carbon County Board of Elections, Centre County Board of Elections, Chester County Board of Elections, Clarion County Board of Elections, Clearfield County Board of Elections, Clinton County Board of Elections, Columbia County Board of Elections, Crawford County Board of Elections, Cumberland County Board of Elections, Dauphin County Board of Elections, Delaware County Board of Elections, Elk County Board of Elections, Erie County Board of Elections, Fayette County Board of Elections, Forest County Board of Elections, Franklin County Board of Elections, Fulton County Board of Elections, Greene County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Jefferson County Board of Elections, Juniata County Board of Elections, Lackawanna County Board of Elections, Lancaster County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Lehigh County Board of Elections, Luzerne County Board of Elections, Lycoming County Board of Elections, McKean County Board of Elections, Mercer County Board of Elections, Mifflin County Board of Elections, Monroe County Board of Elections, Montgomery County Board of Elections, Montour County Board of Elections, Northampton County Board of Elections, Northumberland County

Board of Elections, Perry County Board of Elections, Philadelphia County Board of Elections, Pike County Board of Elections, Potter County Board of Elections, Schuylkill County Board of Elections, Snyder County Board of Elections, Somerset County Board of Elections, Sullivan County Board of Elections, Susquehanna County Board of Elections, Tioga County Board of Elections, Union County Board of Elections, Venango County Board of Elections, Warren County Board of Elections, Washington County Board of Elections, Wayne County Board of Elections, Westmoreland County Board of Elections, Wyoming County Board of Elections, and York County Board of Elections (collectively hereinafter, the “County Election Boards”), are the county boards of elections in and for each county of the Commonwealth of Pennsylvania as provided by Election Code Section 301, codified at 25 P.S. § 2641. The County Election Boards “have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]” *Id.* at § 2641(a). The County Election Boards’ general powers and duties are set forth in Election Code Section 302, codified at 25 P.S. § 2642. The County Election Boards are executive agencies that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion

FACTUAL BACKGROUND

11. Yesterday, the November 3, 2020 General Election was held across the United States, with many states having already declared the winners in their jurisdictions.

12. However, in Pennsylvania, we are days away from being able to declare the results of the election. This is largely the result of the fact that absentee and mail-in ballots are still being pre-canvassed and counted. Once the pre-canvassing process is completed for those ballots received by the County Boards of Election prior to Election Day on November 3, 2020, the Counties will then begin their canvassing process.

13. While the Counties continue their pre-canvass and canvassing processes today and into the following days, absentee and mail-in ballots are still currently being received and, under the Pennsylvania Supreme Court's September 17, 2020 decision, issued in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020),¹ and may be received until 5 p.m. on Friday, November 6, 2020, if postmarked by November 3, 2020.

¹ The Pennsylvania Supreme Court's decision as it relates to the 3-day extension of the absentee and mail-in ballot return date is pending before the United States Supreme Court via a petition for certiorari filed on October 23, 2020. See *Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania*, Case No. 20-542 (U.S.).

14. Just two days before Election Day on Sunday, November 1, 2020, Secretary Boockvar issued directions to each of the 67 County Boards of Elections stating, in relevant part:

[I]f county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board *by the sixth calendar day following the canvassing, or on or before Thursday, November 12.*

See **Exhibit 1**, at p. 3 (emphasis added).

15. These instructions directing the Counties to afford absentee and mail-in voters extra time – 3 days beyond November 9, 2020, – to cure their failure to provide proof of identification is in direct contravention of Pennsylvania’s Election Code.

16. Section 1308 of Pennsylvania’s Election Code, codified section 25 P.S. § 3146.8(h), clearly and mandatorily provides:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

(1) (Deleted by amendment).

(2) If the proof of identification is received and verified *prior to the sixth calendar day following the election*, then the county board of elections shall canvass the

absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election***, then the absentee ballot or mail-in ballot ***shall not be counted***.

25 P.S. § 3146.8(h) (emphases added).

17. Subparts (2) and (3) of Election Code Section 1308(h) provides for a six calendar day statutory period in which voters may satisfy proof of their identity and is triggered by and expressly tied to election day. *See id.* (stating “following the election”). These provisions are clear, unequivocal and mandatory.

18. The word “election” “shall mean any general, municipal, special or primary election, unless otherwise specified.” *See* Election Code Section 102(f), 25 P.S. § 2602(f).

19. The words “general election” “shall mean the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” *See* Election Code Section 102(h), 25 P.S. § 2602(h).

20. There can be no dispute that the “election,” as defined by Election Section 102(f) for the 2020 General Election was Tuesday, November 3, 2020.

21. Election Code Section 103(e), codified at 25 P.S. § 2603(e), states in full:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed,

or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

25 P.S. § 2603(e)

22. Thus, the six calendar day statutory period “following the election” ends on Monday, November 9, 2020.

23. However, Secretary Boockvar’s November 1, 2020 guidance illegally extends the six calendar day statutory period by another three days (for a total of a nine day period) until November 12 by tying the commencement of the period to “following the canvassing” instead of “following the election.”

24. There is nothing in Pennsylvania’s Election Code or elsewhere under Pennsylvania law that permits Secretary Boockvar to rewrite our laws in this fashion.

25. The November 1, 2020 guidance violates the canvassing provisions of the Election Code, specifically Section 1308 codified at Section 3146.8(h).

26. If Secretary Boockvar’s guidance is allowed to continue, it will undoubtedly create a high risk of jeopardizing the integrity of the November 3, 2020 General Election by allowing for the counting and canvassing of absentee and mail-in ballots by electors who fail to provide by November 9, 2020, the requisite proof of identification, as mandated by the General Assembly.

27. Critically, the November 1, 2020 guidance will further delay the 67 County Boards of Elections' abilities to finish the canvassing process and tabulation of votes and cause the tabulation of ballots which, under the electoral scheme enacted by the General Assembly, are determined "shall not be counted." *See* 25 P.S. § 3146.8(h)(3).

28. While the rest of the country will know which candidates won in each of the other states, Pennsylvanians may be forced to wait yet another several days for the outcome of the election – all because of guidance that directly violates the Election Code.

COUNT I
DECLARATORY AND SPECIAL INJUNCTIVE RELIEF

29. Petitioners incorporate the foregoing paragraphs as if fully set forth at length.

30. Respondents have a duty to comply with the laws of the Commonwealth of Pennsylvania.

31. "The Commonwealth expects that all officials charged with the duty of guarding and computing the votes of qualified electors will obey the letter and spirit of the applicable law in respect to that duty; only by such obedience to the law will the possibility of fraud be reduced to a minimum." *Appeal of Simon*, 353 Pa. 14, 46 A.2d 243, 245 (1946). The failure of the Respondents to comply with the plain

requirements of Pennsylvania's Election Code entitles Petitioners to the relief they seek herein.

32. Petitioners have no adequate remedy at law to redress the harm as a result of Respondents' violation of the Pennsylvania Election Code.

33. Injunctive relief is necessary to prevent the substantial injury and immediate and irreparable harm that Petitioners would suffer if Respondents are permitted to violate the laws of the Commonwealth of Pennsylvania, specifically Section 1308 of the Election, codified at 25 P.S. § 3146.8(h), by extending the six calendar statutory period three days to November 12.

34. A greater injury would occur in refusing the injunction than granting it because the Respondents are illegally and unilaterally extending the General Election in Pennsylvania by yet another 3 days until November 12, 2020 by allowing absentee and mail-in voters additional time beyond the six calendar day statutory period "following the election" to provide missing proof of identification.

35. Respondents' actions increase the risk of jeopardizing the integrity of the November 3, 2020 general election.

WHEREFORE, Petitioners respectfully request entry of declaratory and special injunctive and/or preliminary injunctive relief in their favor and against Respondents prohibiting Respondents from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 8,

2020 in direct contravention of the Pennsylvania Election Code, and/or from prohibiting the Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020.

Respectfully Submitted,

Dated: November 4, 2020

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr. (PA #49520)

Jeremy A. Mercer (PA #86480)

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Counsel for Petitioners

ATTORNEY VERIFICATION

I, Ronald L. Hicks, Jr., am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr.

PA Supreme Court No. 49520

EXHIBIT 1



**CANVASSING SEGREGATED MAIL-IN AND CIVILIAN
ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON
TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON
FRIDAY, NOVEMBER 6, 2020**

Date: November 1, 2020

Version: 1.0

On October 28, 2020, the Department of State issued guidance related to the segregation of mail-in and civilian absentee ballots received by mail after 8:00 P.M. on Tuesday November 3, 2020 and before 5:00 P.M. on Friday, November 6, 2020. In doing so, the Department of State indicated it would update the county boards of elections on how to canvass those segregated ballots. That guidance follows:

1. All directions in the guidance issued on October 28, 2020 concerning the segregation and logging of ballots received during this defined post-election period continue to apply. Specifically, mail-in and civilian absentee ballots received by mail after 8:00 P.M. on November 3 and before 5:00 P.M. on November 6 shall be identified and segregated from all other voted ballots and shall be maintained, preserved and appropriately logged as directed in the October 28, 2020 guidance.
2. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the ballots are canvassed.
3. By statute, no challenges by authorized representatives or any third party are permitted during canvass of the mail-in and absentee ballots.
4. To facilitate transparency and ensure that all validly cast ballots are counted, it is critically important that county boards maintain accurate records of the disposition of ballots received during this period as directed below.

Canvass Procedures

- Guidance concerning mail-in and absentee ballots previously provided by the Department, including the guidance issued on August 19, 2020, September 11, 2020, and September 28, 2020, continues to apply unless otherwise specified herein.
- The county board of elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.
- The county board of elections shall examine the voter declaration on each envelope to ensure that it is executed and signed and verify that the voter's name appears on the approved list of mail-in and absentee voters.
- The county board of elections should set aside and should not open or count any of the following:
 - Ballots cast by any voter who died prior to the opening of the polls on November 3, 2020.
 - Ballots containing a postmark that is after November 3, 2020.
 - Ballots with a missing or illegible postmark containing a voter declaration that is dated after November 3, 2020.

- Ballots (whenever postmarked) received by mail after 5:00 P.M. on Friday, November 6, 2020.
- Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:
 - If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.
 - For ballots of voters whose applications were challenged prior to the challenge deadline (5:00 P.M. on Friday, October 30, 2020), those ballots should not be counted pending completion of the challenge procedure in the Election Code. Ballot applications can only be challenged on the basis that the applicant is not qualified to vote. Ballots associated with applications timely challenged on this basis must be placed in a secure, safe, and sealed container until the board of elections schedules a formal hearing on the challenged ballots. The time set for the hearing shall be within three (3) days after November 6. The hearing procedure shall comply with the Election Code and shall be the same procedure for challenged ballots received prior to 8:00 P.M. on Tuesday, November 3, 2020.
- Other than ballots falling into one of the categories set forth above, mail-in and civilian absentee ballots that comply with the Election Code and the Department's prior guidance shall be canvassed as follows:
 - Ballots with a postmark on or before November 3, 2020 are valid and must be counted.
 - Ballots that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, are presumed to have been mailed by Tuesday, November 3, 2020, and are valid and must be counted, unless a preponderance of the evidence demonstrates that the ballot was mailed after November 3, 2020.
 - County boards of elections are instructed to maintain separate counts for each of the following categories of ballots: (i) ballots with a postmark on or before November 3, 2020 which are counted; (ii) ballots without a postmark (or with an illegible postmark) which are presumed to have been mailed prior to Election Day and which are counted; and (iii) ballots without a postmark (or with an illegible postmark) which are determined by a preponderance of the evidence to have been mailed after Election Day and which are not counted.
- Consistent with the Department's prior guidance, county boards of elections are instructed to set aside any ballots that lack the inner secrecy envelope and any ballots in

secrecy envelopes that contain any text, mark, or symbol which reveals the identity of the voter, the voter's political affiliation, or the voter's candidate preference.

- The county boards of elections shall count, compute, and separately tally the ballots approved for canvassing. These separate ballot tallies shall distinguish between: (i) ballots counted with a postmark prior to November 3, 2020 and (ii) ballots counted with an illegible or no postmark that were presumed to have been mailed on or before November 3.
- Counties shall maintain in a safe and secure location all ballots and ballot envelopes that are canvassed pursuant to this guidance.

Version	Date	Description
1.0	11.1.2020	Initial document release

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For :
President, Inc.; and :
Republican National Committee, :
Petitioners :

v. :

Kathy Boockvar, in her capacity :
as Secretary of the Commonwealth of :
Pennsylvania; Adams County Board of :
Elections; Allegheny County Board of :
Elections; Armstrong County Board of :
Elections; Beaver County Board of :
Elections; Bedford County Board of :
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Elections; Warren County Board of	:	
Elections; Washington County Board of	:	
Elections; Wayne County Board of	:	
Elections; Westmoreland County Board	:	
of Elections; Wyoming County Board	:	
of Elections; and York County Board of	:	
Elections,	:	
Respondents	:	No. 602 M.D. 2020

PER CURIAM

A M E N D E D O R D E R

NOW, this 5th day of November, 2020, upon consideration of Petitioners' Application For Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction, it is hereby ordered that a status conference is scheduled for TODAY, November 5, 2020, at **12:00 NOON**. The status conference shall be conducted by telephone call with counsel for Petitioners and counsel for the Secretary of the Commonwealth, and shall be conducted by a designated judge of the Commonwealth Court sitting in Harrisburg. The Court will contact counsel to confirm the call and to provide the call-in information.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For
President, Inc.; and
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Petitioners

v.

Kathy Boockvar, in her capacity
as Secretary of the Commonwealth of
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Elections; Westmoreland County Board :
of Elections; Wyoming County Board :
of Elections; and York County Board of :
Elections, :

Respondents : No. 602 M.D. 2020

PER CURIAM

ORDER

NOW, this 5th day of November, 2020, upon consideration of Petitioners' Application For Special Relief in the Form of a Special, Preliminary, and/or Permanent Injunction, it is hereby ordered that a status conference is scheduled for TODAY, November 5, 2020, at 10:00 a.m. The status conference shall be conducted by telephone call with counsel for Petitioners and counsel for the Secretary of the Commonwealth, and shall be conducted by a designated judge of the Commonwealth Court sitting in Harrisburg. The Court will contact counsel to confirm the call and to provide the call-in information.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For
President, Inc.; and
Republican National Committee,
Petitioners

v.

No. 602 M.D. 2020

Kathy Boockvar, in her capacity
as Secretary of the Commonwealth of
Pennsylvania; Adams County Board of
Elections; Allegheny County Board of
Elections; Armstrong County Board of
Elections; Beaver County Board of
Elections; Bedford County Board of
Elections; Berks County Board of
Elections; Blair County Board of
Elections; Bradford County Board of
Elections; Bucks County Board of
Elections; Butler County Board of
Elections; Cambria County Board of
Elections; Cameron County Board of
Elections; Carbon County Board of
Elections; Centre County Board of
Elections; Chester County Board of
Elections; Clarion County Board of
Elections; Clearfield County Board of
Elections; Clinton County Board of
Elections; Columbia County Board of
Elections; Crawford County Board of
Elections; Cumberland County Board of
Elections; Dauphin County Board of
Elections; Delaware County Board of
Elections; Elk County Board of
Elections; Erie County Board of
Elections; Fayette County Board of
Elections; Forest County Board of
Elections; Franklin County Board of
Elections; Fulton County Board of
Elections; Greene County Board of
Elections; Huntingdon County Board of
Elections; Indiana County Board of

Elections; Jefferson County Board of	:
Elections; Juniata County Board of	:
Elections; Lackawanna County Board of	:
Elections; Lancaster County Board of	:
Elections; Lawrence County Board of	:
Elections; Lebanon County Board of	:
Elections; Lehigh County Board of	:
Elections; Luzerne County Board of	:
Elections; Lycoming County Board of	:
Elections; McKean County Board of	:
Elections; Mercer County Board of	:
Elections; Mifflin County Board of	:
Elections; Monroe County Board of	:
Elections; Montgomery County Board of	:
Elections; Montour County Board of	:
Elections; Northampton County Board of	:
Elections; Northumberland County Board of	:
Elections; Perry County Board of	:
Elections; Philadelphia County Board of	:
Elections; Pike County Board of	:
Elections; Potter County Board of	:
Elections; Schuylkill County Board of	:
Elections; Snyder County Board of	:
Elections; Somerset County Board of	:
Elections; Sullivan County Board of	:
Elections; Susquehanna County Board of	:
Elections; Tioga County Board of	:
Elections; Union County Board of	:
Elections; Venango County Board of	:
Elections; Warren County Board of	:
Elections; Washington County Board of	:
Elections; Wayne County Board of	:
Elections; Westmoreland County Board of	:
Elections; Wyoming County Board of	:
Elections; and York County Board of	:
Elections,	:
Respondents	:

ORDER

AND NOW this 5th day of November, 2020, upon consideration of
Petitioners' Application for Special Relief in the Form of a Special, Preliminary,

and/or Permanent Injunction to prohibit Respondents from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020, and to prohibit Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020, it is hereby ORDERED as follows:

1. To maintain the *status quo ante* pending the disposition of the merits of Petitioners' Petition for Review in the Nature of a Complaint in Equity, the county boards of elections shall segregate ballots for which identification is received and verified on November 10, 11, and 12, 2020, from ballots for which identification is received and verified on or before November 9, 2020.

2. This segregation of ballots is in addition to the segregation of ballots received after 8:00 p.m. November 3, 2020, and before 5:00 p.m. November 6, 2020. *See Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania, et al.*, No. 20-542, 592 U.S. ____ (October 28, 2020) (order denying Motion to Expedite Consideration of Petition for Writ of Certiorari) (Statement of Alito, J.).

3. The segregated ballots for which identification is received and verified on November 10, 11, and 12, 2020, shall not be counted until further order of this Court.

4. This special injunction will dissolve upon entry of this Court's final order on the Petition for Review in the Nature of a Complaint in Equity.

5. In lieu of amending the November 1, 2020 Guidance, the Secretary of the Commonwealth, Kathy Boockvar, shall immediately transmit a copy of this Order to all county boards of elections.


MARY HANNAH LEAVITT, President Judge

Certified from the Record

NOV 05 2020

And Order Exit

THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For
President, Inc.; and
Republican National Committee,
Petitioners

v.

No. 602 M.D. 2020

Kathy Boockvar, in her capacity
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Elections; Lehigh County Board of	:
Elections; Luzerne County Board of	:
Elections; Lycoming County Board of	:
Elections; McKean County Board of	:
Elections; Mercer County Board of	:
Elections; Mifflin County Board of	:
Elections; Monroe County Board of	:
Elections; Montgomery County Board of	:
Elections; Montour County Board of	:
Elections; Northampton County Board of	:
Elections; Northumberland County Board of	:
Elections; Perry County Board of	:
Elections; Philadelphia County Board of	:
Elections; Pike County Board of	:
Elections; Potter County Board of	:
Elections; Schuylkill County Board of	:
Elections; Snyder County Board of	:
Elections; Somerset County Board of	:
Elections; Sullivan County Board of	:
Elections; Susquehanna County Board of	:
Elections; Tioga County Board of	:
Elections; Union County Board of	:
Elections; Venango County Board of	:
Elections; Warren County Board of	:
Elections; Washington County Board of	:
Elections; Wayne County Board of	:
Elections; Westmoreland County Board of	:
Elections; Wyoming County Board of	:
Elections; and York County Board of	:
Elections,	:
Respondents	:


ORDER

AND NOW this 6th day of November, 2020, the Court ORDERS the parties to file, by no later than 12:00 p.m. Tuesday, November 10, 2020:

(1) A stipulated record consisting of the Department of State's November 1, 2020, Guidance entitled "Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. on Friday, November 6, 2020," and verification that the Guidance was sent to the county boards of elections; and

(2) Memoranda of law on the legal issues raised in Petitioners' Petition for Review in the Nature of a Complaint in Equity.

Oral argument, if any, shall be scheduled by separate order.



MARY HANNAH LEAVITT, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

602 MD 2020

**DONALD J. TRUMP FOR PRESIDENT, INC., and
REPUBLICAN NATIONAL COMMITTEE,**

Petitioners,

v.

**KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of Pennsylvania, et al.,**

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONERS' PETITION FOR REVIEW
IN THE NATURE OF A COMPLAINT IN EQUITY**

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STATEMENT OF JURISDICTION

This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1), which grants the Commonwealth Court of Pennsylvania original jurisdiction over civil actions against a Commonwealth government, including any officer of the Commonwealth acting in her official capacity.

ORDER OR OTHER DETERMINATION IN QUESTION

Petitioners seek a declaratory judgment from this Court affirming the clear and unambiguous language of Election Code Section 1308(h)(3) which mandates the last date for the elector's provision of identification as Monday, November 9, 2020, which is the sixth calendar following the November 3, 2020 General Election. *See* 25 P.S. § 3146.8(h)(3) (“(h) For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified: ... (3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted.”). *See also* 25 P.S. § 3146.8(h)(2).

Petitioners also seek a declaratory judgment from this Court that Respondent, Secretary of the Commonwealth of Pennsylvania, Kathy Boockvar (“Secretary Boockvar”), does not possess the authority to alter and unilaterally extend the statutory deadline of November 9, 2020, for absentee and mail-in electors to provide proof of missing identification if such identification was not received and verified by Election Day by Respondents, the 67 County Boards of Elections (the “County Election Boards”), and that a ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by Monday, November 9, 2020. As such, Secretary Boockvar’s November 1, 2020 “guidance” titled “CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE

BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020” (available online at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> and hereinafter referred to as “November 1, 2020 Guidance.”) is invalid, void and contrary to the express terms of Pennsylvania’s Election Code.

STATEMENT OF BOTH THE SCOPE OF REVIEW
AND STANDARD OF REVIEW

This petition for review “requires this Court to engage in statutory interpretation of the Election Code, which, as a question of law, is subject to a de novo standard of review and a plenary scope of review.” *Banfield v. Cortés*, 110 A.3d 155, 166 (Pa. 2015) (citing *Sch. Dist. of Philadelphia v. Dep’t of Educ.*, 92 A.3d 746, 751 (Pa. 2014)).

STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the statutory deadline for receipt and verification of missing proof of identification for an absentee or mail-in voters for the November 3, 2020 General Election is Monday, November 9, 2020, pursuant to 25 P.S. § 3146.8(h)(3) and 25 P.S. § 2603(e)?

Suggested answer: ***Yes.***

2. Whether Secretary Boockvar lacks the authority to alter the statutory deadline for receipt and verification of missing proof of identification for an absentee or mail-in voters?

Suggested answer: ***Yes.***

STATEMENT OF THE CASE

I. FORM OF ACTION AND PROCEDURAL HISTORY.

This is a case of original jurisdiction filed in this Court on November 4, 2020. Contemporaneous with the Petition of Review, Petitioners filed an Application for Special Relief in the form of a special, preliminary, and/or permanent injunction. On November 5, 2020, President Judge Mary Hannah Leavitt entered an Order temporarily granting the Application for Relief to maintain the status quo pending the disposition of this case on the merits. The Order also directs the Respondents County Election Boards to segregate ballots for which identification is received and verified on November 10, 11, and 12, 2020, from ballots for which identification is received and verified on or before November 9, 2020, and that those segregated ballots shall not be counted until further order of this Court.

II. PRIOR DETERMINATIONS.

There are no prior determinations at issue in this Petition for Review.

III. CHRONOLOGICAL STATEMENT OF FACTS.

A. The Parties.

Petitioner, Donald J. Trump for President, Inc. (hereinafter, the “Trump Campaign”), is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America (hereinafter, “President Trump”). President Trump is the Republican nominee for the office of the President of the United States of America in the ongoing General Election. The Trump

Campaign brings this action for itself and on behalf of its candidate, President Trump. President Trump is a “candidate” as that term is defined in Election Code Section 102(a), codified at 25 P.S. §§ 2602(a). *See Rowland v. Smith*, 83 Pa. D. & C. 99, 101-2 (Pa. Ct. Com. Pl. Dauphin 1952) (“candidate” under the Election Code includes one who is a candidate for nomination for President of the United States). As a political committee for a federal candidate, the Trump Campaign has standing to bring this action. *See, e.g., In re General Election-1985*, 531 A.2d 836, 838 (Pa. Commw. Ct. 1987) (a candidate for office in the election at issue suffers a direct and substantial harm sufficient for standing to contest the manner in which an election will be conducted).

Petitioner, Republican National Committee (hereinafter, the “RNC”) is a national political committee that leads the Republican Party of the United States (hereinafter, the “Republican Party”). The RNC works to elect Republican candidates to state and federal offices throughout the United States, including in the Commonwealth of Pennsylvania, and it organizes and operates the Republican National Convention through which its members nominate their candidates for President and Vice President of the United States. The Republican Party includes over thirty million (30,000,000) registered Republicans in all fifty (50) states, the District of Columbia, and the U.S. territories, and constitutes a “political party” as that term is defined in Election Code Section 801, 25 P.S. § 2831. The RNC brings

this action for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3, 2020 General Election in the Commonwealth of Pennsylvania. As a political committee, the RNC has standing to bring this action. *See In re Canvass of Absentee Ballots of November 4, 2003*, 839 A.2d 451, 457 (Pa. Commw. Ct. 2003) (“political bodies [have] standing to appeal a decision ... regarding the allowance or disallowance of votes”), *rev’d on other grounds*, 843 A.2d 1223 (Pa. 2004).

Respondent, Secretary Boockvar is the Secretary of the Commonwealth. In this role, Secretary Boockvar leads the Pennsylvania Department of State. As Secretary, she is identified as Pennsylvania’s Chief Elections Officer and a member of the Governor’s Executive Board. Secretary Boockvar is sued in her official capacity.

Respondents County Election Boards are the county boards of elections in and for each county of the Commonwealth of Pennsylvania as provided by Election Code Section 301, codified at 25 P.S. § 2641. The County Election Boards “have jurisdiction over the conduct of primaries and elections in such count[ies], in accordance with the provision of [the Election Code.]” *Id.* at § 2641(a). The County Election Boards’ general powers and duties are set forth in Election Code Section 302, codified at 25 P.S. § 2642. The County Election Boards are executive agencies

that carry out legislative mandates, and their duties concerning the conduct of elections are purely ministerial with no exercise of discretion.

B. Secretary Boockvar's November 1, 2020 Illegal Guidance Published To the County Election Boards Extending The Proof of Identification Deadline from November 9, 2020 to November 12, 2020.

On November 3, 2020, a General Election was held in which several candidates for federal and state offices were on the ballot, including without limitation the reelection campaign of Donald J. Trump, the 45th President of the United States of America and the Republican nominee for the office of the President of the United States of America.

On Sunday, November 1, 2020, just two days before the General Election on November 3, 2020 and before the pre-canvass meetings were scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day, Respondent, Secretary Kathy published and delivered a guidance letter to the 67 County Election Boards. *See* the parties' joint Stipulated Record, R-3-R-6 ("CANVASSING SEGREGATED MAIL-IN AND CIVILIAN ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON FRIDAY, NOVEMBER 6, 2020," dated November 1, 2020, version 1.0 (available online at

<https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvass>

[ing-Segregated-Ballot-Guidance.pdf](#) and hereinafter referred to as “November 1, 2020 Guidance.”). The November 1, 2020 Guidance serves as an update to guidance that Secretary Boockvar and the Pennsylvania Department of State issued on October 28, 2020, concerning the segregation and canvassing of absentee and mail-in ballots cast in the November 3, 2020 General Election

Among other things, Secretary Boockvar’s provided the following instruction:

...

Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:

“If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day **following the canvassing**, or on or before **Thursday, November 12.**”

See November 1, 2020 Guidance at 3, R-5. Secretary Boockvar’s November 1, 2020 Guidance, issued on the eve of the General Election, also addressed issues related to the three-day extension for mail-in and absentee ballots returns blessed by Pennsylvania Supreme Court’s September 17, 2020 decision, issued in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 Pa. LEXIS 4872 (Pa., Sept. 17, 2020).¹

¹ The Pennsylvania Supreme Court’s decision as it relates to the three-day extension of the absentee and mail-in ballot return date is pending before the United

The November 1, 2020 Guidance’s clauses concerning proof of identification curing was not limited, however, to those ballots received during the three-day extension period for mail-in and absentee ballots. Instead, it applies broadly to *all* mail-in and absentee ballots that may have unverifiable proof of identification, undercutting any argument by Secretary Boockvar that the purpose of the guidance is to provide remediation to those voters that returned their ballots during the extended return period.

Section 1308(h) of Pennsylvania’s Election Code, codified at 25 P.S. § 3146.8(h), requires that if a voter’s identification is not received and verified “by the sixth day following *the election*”, those ballots “*shall* not be counted.” See 25 P.S. § 3146.8(h)(2) & (3) (emphases added). Section 1308(h) of the Pennsylvania Election Code, codified at 25 P.S. § 3146.8(h), states more fully :

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified:

...

(2) If the proof of identification is received and verified *prior to the sixth calendar day following the election*, then the county board of elections shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with subsection (g)(2).

States Supreme Court via a petition for certiorari filed on October 23, 2020. See *Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania*, Case No. 20-542 (U.S.).

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections ***by the sixth calendar day following the election***, then the absentee ballot or mail-in ballot ***shall not be counted***.

See 25 P.S. § 3146.8(h)(2) & (3) (emphasis added). If the deadline is calculated as the statute is written, then as it pertains to the November 3, 2020 General Election, this deadline for voters to resolve proof of identification issues is Monday, November 9, 2020, not November 12, 2020.

C. Calculation of the Proof of Identification Deadline under Pennsylvania’s Election Code.

Section 102(f) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(f), defines the word “election” to mean “any general, municipal, special, or primary election, unless otherwise specified.” 25 P.S. § 2602(f). Moreover, Section 102(h) of the Pennsylvania Election Code, codified at 25 P.S. § 2602(h), defines the word “general election” to mean “the election which the Constitution of this Commonwealth requires to be held in even-numbered years.” 25 P.S. § 2602(h).

Article VII, Section 2 of the Pennsylvania Constitution defines a “general election” to be “[t]he general election ... held biennially on the Tuesday next following the first Monday of November in each even-numbered year” unless the General Assembly, by two-thirds consent of all members of each House, fixes a different day. Pa. Const. Art. VII, § 2. The November 3, 2020 General Election constitutes an “election” and “general election” as those terms are defined in Section

102(f) and (h) of the Pennsylvania Election Code, and Article VII, Section 2 of the Pennsylvania Constitution.

Section 103(e) of the Election Code provides:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed, or notice given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or a legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

See 25 P.S. § 2603(e).

Pursuant to Section 2603(e) of the Election Code, because the sixth calendar day following the November 3, 2020 General Election falls on Sunday, November 8, 2020, the sixth calendar period under Election Code Section 1308(h)(3) expires on Monday, November 9, 2020.

D. Secretary Boockvar’s Lack Of Statutory Authority To Implement New Election Rules.

The Pennsylvania Constitution vests no powers or duties in Secretary Boockvar as they relate to the administration of elections. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). Under the Election Code, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. *Id.* at 764; *Hamilton v. Johnson*,

141 A. 846, 847 (Pa. 1928). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, codified at 25 P.S. § 2621. The Secretary's powers include determining the form of petitions, examining and approving voting machines, certifying the names of candidates for elections, receiving and demanding reports from the county board of elections, receiving and certifying elections results; developing training programs; and ordering recounts or recanvasses. 25 P.S. § 2621. None of those duties include extending statutorily prescribed deadlines by at her own whim and whenever she unilaterally deems appropriate.

SUMMARY OF ARGUMENT

The statutorily prescribed deadline for voters to resolve proof of identification issues during this November 3, 2020 General Election is November 9, 2020—six days after the election as calculated in accordance with 25 P.S. § 2603(e). Secretary Boockvar’s November 1, 2020 Guidance, directed County Election Boards to extend that deadline until November 12, 2020—six days after the canvass – is void and contrary to Pennsylvania’s Election Code.

Secretary Boockvar lacks the authority to extend that deadline on her accord. Secretary Boockvar’s unlawful guidance clearly violates established state law, improperly usurps the authority of the Pennsylvania General Assembly, and has a substantial and broad impact on the Commonwealth of Pennsylvania’s administration of the tabulation of votes for the General Election.

ARGUMENT IN SUPPORT OF PETITIONERS' REQUEST FOR RELIEF

This is a simple matter of statutory construction, and two statutes are at play. First, Section 1308(h) of Pennsylvania's Election Code, codified at 25 P.S. § 3146.8(h), provides the time by which voters must resolve proof of identification issues in order to have their mail-in and absentee ballots counted, and that statute calculates the identification deadline the date of the "election," not any other date. Second, 25 P.S. §§ 2621(a)-(g) grants the Secretary of the Commonwealth her powers and duties, and those powers do not include extending statutorily prescribed deadlines or the power to issue guidance encouraging County Boards of Elections to violate the law.

I. THE NOVEMBER 1, 2020 GUIDANCE IS VIOL AND INVALID UNDER PENNSYLVANIA'S ELECTION CODE.

The simple, plain, unambiguous language of 25 P.S. § 3146.8(h)(3) sets the deadline by which voters must resolve proof of identification issues. Pursuant to 1 P.S. § 1921(b), "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." No ambiguity exists in the statute concerning the proof-of-identification deadline for mail-in or absentee ballots: "If an elector fails to provide proof of identification . . . by the sixth calendar day following the election, then the absentee ballot or mail-in ballot shall not be counted."

The deadline statute provides a cure mechanism for voters that fail to provide verifiable proof of identification. That cure mechanism, however, does not provide voters with a right to cure into perpetuity. Rather, the deadline set by the statute makes clear that the clock begins running on the cure period on the day “following the election.” 25 P.S. § 3146.8(h)(3). The 2020 General Election occurred on November 3, 2020. By statutory construction, the cure period terminates on November 9, 2020.

The deadline statute is equally unambiguous in the consequences that arise if a voter fails to provide verifiable proof of identification prior to the deadline. In mandatory language the statute provides that the ballot “shall not be counted.” No ballot that has not cured a proof of identification deficiency on or before November 9, 2020, may be counted in the 2020 General Election.

II. SECRETARY BOOCKVAR LACKED THE AUTHORITY TO ISSUE THE NOVEMBER 1, 2020 GUIDANCE.

Ignoring the date set by the General Assembly, Secretary Boockvar assumed power for herself to change it, but Secretary does not possess the power to revise the Election Code. The November 1, 2020 guidance represents a serious threat to the integrity of the Commonwealth of Pennsylvania’s election results. The guidance has a significant and broad impact that wrongfully purports to invalidate existing Election Code because it applies to all types of ballots where proof of identification

for an absentee or mail-in voter were not received or could not be verified by November 9, 2020, regardless of the method of delivery.

In statewide elections involving federal candidates, “a State’s regulatory authority springs directly from the United States Constitution.” *Project Vote v. Kelly*, 805 F. Supp. 2d 152, 174 (W.D. Pa. 2011) (citing *Cook v. Gralike*, 531 U.S. 510, 522-523 (2001); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995)). The Elections Clause of the United States Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof.” U.S. Const. Art. I, § 4, cl. 1 (emphasis added). Likewise, the Electors Clause of the United States Constitution states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President. U.S. Const. Art. II, § 1, cl. 2 (emphasis added).

The Legislature is “the representative body which ma[kes] the laws of the people.” *Smiley v. Holm*, 285 U.S. 355, 365 (1932). Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 135 S. Ct. 2652, 2668 (U.S. 2015).

In Pennsylvania, the “legislature” is the General Assembly. Pa. Const. Art. II, § 1. *See also Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (“The power to regulate elections is legislative, and has always been exercised by the lawmaking branch of the government.”); *Patterson v. Barlow*, 60 Pa. 54, 75 (1869) (“It is admitted that the Constitution cannot execute itself, and that the power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the government.”).

The Pennsylvania Constitution vests no powers or duties in Secretary of State Boockvar. *Perzel v. Cortes*, 870 A.2d 759, 764 (Pa. 2005). Instead, her general powers and duties concerning elections are set forth in Election Code Section 201, 25 P.S. § 2621. Under the Election Code, the Secretary of the Commonwealth has no role that allows her to oversee the County Election Boards’ conduct of primaries and general elections, except the limited authority to order a recount or recanvass under Election Section 1404, 25 P.S. § 3154. *See* 25 P.S. § 2621(f.2).

Under Election Code Section 201, Secretary Boockvar has no rule-making power or authority. *See* 25 P.S. §§ 2621(a)-(g). Instead, Secretary Boockvar acts primarily in a ministerial capacity and has no power or authority to intrude upon the province of the Pennsylvania General Assembly. *Perzel v. Cortes*, 870 A.2d at 764 (Pa. 2004); *Hamilton v. Johnson*, 41 A. at 847 (Pa. 1928).

On Sunday, November 1, 2020, two days before the date of the general election on November 3, 2020, and before pre-canvassing was scheduled to begin in each of the 67 Counties at 7:00 a.m. on Election Day on November 3, 2020 Respondent Secretary Kathy published and delivered yet more “guidance” contradicting the Election Code. This new, flagrant attack on the legislature’s authority was sent to every county in the Commonwealth of Pennsylvania. *See* the parties’ joint Stipulated Record, R-14-R-15.

In this guidance, Secretary Boockvar re-writes the Election Code by *sua sponte* resetting the deadline for absentee and mail-in voters to provide missing proof of identification. She unilaterally extends it the “sixth day following the canvassing, or on or before Thursday, November 12”. R-5. Even if Secretary Boockvar did have rule-making authority, which she does not for the reasons stated above, she certainly does not have the authority to issue guidance that is in direct contradiction with the express terms of our Election Code. Moreover, the County Election Boards do not have the authority to enforce and follow the Secretary’s unlawful November 1, 2020 guidance.

The November 1, 2020 guidance directly violates Section 1308(h) of Pennsylvania’s Election Code, codified at 25 P.S. § 3146.8(h), which requires that if a voter’s identification is not received and verified “by the sixth day following *the election*”, those ballots “*shall* not be counted.” *See* 25 P.S. § 3146.8(h)(2) & (3)

(emphases added). As it pertains to the November 3, 2020 General Election, this deadline is Monday, November 9, 2020. The Secretary's unlawful guidance seeks to extend this by three days to November 12, 2020.

As neither Secretary Boockvar nor the County Elections Boards have any authority to re-write the Election Code or administer the November 3, 2020 General Election in a manner that is inconsistent and/or directly contrary to the Election Code's clear and unambiguous mandates, Petitioners seek special, preliminary, and/or permanent injunctive relief to enjoin Respondents' attempted extension of the Election Section 1308's six calendar day statutory period and ask the Court to direct the County Boards of Elections to adhere to these provisions of the Election Code, Section 1308(h) and not count those absentee and mail-in ballots of voters whose identification is not received and verified by November 9, 2020.

III. THE SECRETARY'S NOVEMBER 1, 2020 GUIDANCE REPRESENTS A SUBSTANTIAL THREAT TO THE INTEGRITY OF THE ELECTION BECAUSE IT IS BROADLY WRITTEN TO APPLY TO ALL ABSENTEE AND MAIL-IN BALLOTS.

The November 1, 2020 guidance is broadly written to include all ballots where proof of identification for an absentee or mail-in voter was not received or could not be verified by Election Day. The guidance contains no language that limits the scope of its applicability with respect to the method of delivery of the ballots.

Secretary Boockvar has previously argued that the scope of the November 1, 2020 guidance should be construed narrowly to only absentee and mail-in ballots that were delivered by U.S. mail. The Secretary has justified this purported “narrow scope” by referencing her intent at the time she issued the guidance.

However, the written guidance contains no limiting language to support the Secretary’s argument that its applicability is limited to absentee and mail-in ballots delivered only by U.S. mail. Instead, as written, the relevant language within the guidance regarding the extension of proof-of identification date clearly applies to all mail-in and absentee ballots, including those delivered in person to the county elections board office, a satellite office, or a drop box. R-5. Secretary Boockvar’s *post hoc* arguments about her purported intent do not change the fact that the guidance, which was distributed to and relied upon by all 67 counties (R-14-R-15), lacks any language whatsoever that narrows the scope of applicability to absentee and mail-in ballots received only by U.S. mail.

CONCLUSION

Pennsylvania elections must be free, fair, well-run, and compliant with the Pennsylvania Election Code as written by the General Assembly. Secretary Boockvar’s attempt to institute new rules, on ad hoc basis and on the eve of the General Election through the issuance of the November 1, 2020 guidance is an attack on the rule of law and the integrity of the Commonwealth of Pennsylvania’s

November 3, 2020 General Election. Petitioners respectfully request the Court to enter an order permanently enjoining Respondents, their agents, servants, and officers, and others from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020 in direct contravention of the Pennsylvania Election Code, and prohibiting Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020. Specifically, for those ballots for which proof of identification was not received until November 10, 11 and 12, 2020, they should be set aside and not counted during the County Election Boards canvassing.

Date: November 10, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Petitioners' Memorandum of Law complies with the length requirements of Pa. R.A.P. 2135. According to the word count of the word processing system used to prepare this Memorandum of Law, the brief contains 4,274 words, not including the supplementary matter as described in Pa. R.A.P. 2135(b).

Date: November 10, 2020

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I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Date: November 10, 2020

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PROOF OF SERVICE

I hereby certify that on the 10th day of November, 2020, a true and correct copy of the foregoing Memorandum of Law was served upon all counsel of record via the PAC File notification system and upon all unrepresented parties via first class mail.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT,
INC.; and REPUBLICAN NATIONAL
COMMITTEE,

Petitioners,

v.

KATHY BOOCKVAR, in her capacity as
Secretary of the Commonwealth of
Pennsylvania; ADAMS COUNTY
BOARD OF ELECTIONS; ALLEGHENY
COUNTY BOARD OF ELECTIONS;
ARMSTRONG COUNTY BOARD OF
ELECTIONS; BEAVER COUNTY
BOARD OF ELECTIONS; BEDFORD
COUNTY BOARD OF ELECTIONS;
BERKS COUNTY BOARD OF
ELECTIONS; BLAIR COUNTY BOARD
OF ELECTIONS; BRADFORD COUNTY
BOARD OF ELECTIONS; BUCKS
COUNTY BOARD OF ELECTIONS;
BUTLER COUNTY BOARD OF
ELECTIONS; CAMBRIA COUNTY
BOARD OF ELECTIONS; CAMERON
COUNTY BOARD OF ELECTIONS;
CARBON COUNTY BOARD OF
ELECTIONS; CENTRE COUNTY
BOARD OF ELECTIONS; CHESTER
COUNTY BOARD OF ELECTIONS;
CLARION COUNTY BOARD OF
ELECTIONS; CLEARFIELD COUNTY
BOARD OF ELECTIONS; CLINTON
COUNTY BOARD OF ELECTIONS;
COLUMBIA COUNTY BOARD OF
ELECTIONS; CRAWFORD COUNTY
BOARD OF ELECTIONS;
CUMBERLAND COUNTY BOARD OF
ELECTIONS; DAUPHIN COUNTY

ORIGINAL JURISDICTION

No. 602 MD 2020

BOARD OF ELECTIONS; DELAWARE
COUNTY BOARD OF ELECTIONS;
ELK COUNTY BOARD OF
ELECTIONS; ERIE COUNTY BOARD
OF ELECTIONS; FAYETTE COUNTY
BOARD OF ELECTIONS; FOREST
COUNTY BOARD OF ELECTIONS;
FRANKLIN COUNTY BOARD OF
ELECTIONS; FULTON COUNTY
BOARD OF ELECTIONS; GREENE
COUNTY BOARD OF ELECTIONS;
HUNTINGDON COUNTY BOARD OF
ELECTIONS; INDIANA COUNTY
BOARD OF ELECTIONS; JEFFERSON
COUNTY BOARD OF ELECTIONS;
JUNIATA COUNTY BOARD OF
ELECTIONS; LACKAWANNA
COUNTY BOARD OF ELECTIONS;
LANCASTER COUNTY BOARD OF
ELECTIONS; LAWRENCE COUNTY
BOARD OF ELECTIONS; LEBANON
COUNTY BOARD OF ELECTIONS;
LEHIGH COUNTY BOARD OF
ELECTIONS; LUZERNE COUNTY
BOARD OF ELECTIONS; LYCOMING
COUNTY BOARD OF ELECTIONS;
MCKEAN COUNTY BOARD OF
ELECTIONS; MERCER COUNTY
BOARD OF ELECTIONS; MIFFLIN
COUNTY BOARD OF ELECTIONS;
MONROE COUNTY BOARD OF
ELECTIONS; MONTGOMERY
COUNTY BOARD OF ELECTIONS;
MONTOUR COUNTY BOARD OF
ELECTIONS; NORTHAMPTON
COUNTY BOARD OF ELECTIONS;
NORTHUMBERLAND COUNTY
BOARD OF ELECTIONS; PERRY
COUNTY BOARD OF ELECTIONS;
PHILADELPHIA COUNTY BOARD OF

ELECTIONS; PIKE COUNTY BOARD OF ELECTIONS; POTTER COUNTY BOARD OF ELECTIONS; SCHUYLKILL COUNTY BOARD OF ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; and YORK COUNTY BOARD OF ELECTIONS,

Respondents,

DNC SERVICES CORP. / DEMOCRATIC NATIONAL COMMITTEE,

Proposed Intervenor-Respondent

**PROPOSED INTERVENOR-RESPONDENT DNC SERVICES CORP. /
DEMOCRATIC NATIONAL COMMITTEE'S MEMORANDUM OF LAW
IN SUPPORT OF RESPONDENTS**

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INTRODUCTION

Petitioners are not entitled to the relief they seek in their Petition for several reasons. First, Petitioners lack standing: they are not “aggrieved” by the guidance at issue in this action and they lack a “substantial, direct, and immediate interest in the matter.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). Second, the injunction they seek would not prevent them any irreparable harm. Third, Petitioners do not have a clear right to relief. And fourth, the relief sought here would result in far greater harm than it would prevent, including by causing enormous harm to the public by disenfranchising eligible voters who actively defended their fundamental right to vote. Petitioners’ requested relief should be denied, and their Petition should be dismissed.

BACKGROUND

On September 17, 2020, the Supreme Court of Pennsylvania concluded that strict enforcement of 25 P.S. §§ 3146.6(c) and 3150.16(c)—which set the deadline for county boards to receive absentee and mail-in ballots¹ at 8:00 p.m. on Election Day—would violate the Free and Fair Elections Clause of the Pennsylvania Constitution under the circumstances of the ongoing COVID-19 pandemic. *Pa. Democratic Party v. Boockvar*, --- A.3d ---, 2020 WL 5554644, at *10–18 (Pa.

¹ Because the relevant statutory provisions at issue in this dispute apply equally to absentee and mail-in ballots, this brief refers to absentee and mail-in ballots jointly as “mail-in ballots.”

2020). The Court’s decision was based on the lessons of the Commonwealth’s recent June 2 primary election, during which “the pandemic threatened the disenfranchisement of thousands of Pennsylvanians” because “several of the Commonwealth’s county election boards struggled to process the flow of mail-in ballot applications for voters who sought to avoid exposure to the virus.” *Id.* at *17.

The source of this problem was the fact that voters have “only seven days between the last date to request a mail-in ballot and the last day to return a completed ballot.” *Id.* at *18. During the primary, this resulted in several county boards, “especially those in areas hard-hit by the pandemic, [being] unable to provide electors with ballots in time for the electors to return their ballot in accord with the statutory deadline.” *Id.* at *10. Looking to the general election, the Court explained that continuing systemic U.S. Postal Service delays, the coming surge of mail-in ballot applications for the “upcoming highly-contested Presidential Election,” and “the near-certain delays that w[ould] occur” as county boards processed each of those applications meant that “the timeline built into the Election Code cannot be met by the [Postal Service’s] current delivery standards.” *Id.* Thus, strict enforcement of the Election Day receipt deadline would “result[] in the disenfranchisement of voters” who receive their mail-in ballots too late to return them by 8:00 p.m. on Election Day. *Id.*

To prevent that disenfranchisement, the Court extended the deadline such that

mail-in ballots postmarked by 8:00 p.m. on Election Day and received by county boards by 5:00 p.m. on November 6—three days after Election Day—would be counted. *Id.* at *31. The Republican Party of Pennsylvania and individual members of the Republican General Assembly leadership separately applied to the U.S. Supreme Court for a stay of the Pennsylvania Supreme Court’s decision, which the U.S. Supreme Court denied. *Scarnati v. Boockvar*, No. 20A53, 2020 WL 6128194 (U.S. Oct. 19, 2020); *Republican Party of Pa. v. Boockvar*, No. 20A54, 2020 WL 6128193 (U.S. Oct. 19, 2020). The Republican Party also sought expedited consideration of its petition for a writ of certiorari, which the U.S. Supreme Court denied. *Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 WL 6304626 (U.S. Oct. 28, 2020).

The Pennsylvania Supreme Court’s extension of the deadline for county boards to receive mail-in ballots created internal inconsistencies with other statutory deadlines. Relevant to this case is the deadline for voters to submit proof of identification if they fail to do so prior to submitting their mail-in ballot. Under 25 P.S. § 3146.8(h)(5), a voter may submit such identification “by the sixth calendar day following the election,” or for purposes of the 2020 general election, Monday, November 9. But due to the Pennsylvania Supreme Court’s extension of the deadline for county boards to receive mail-in ballots, there was now a significant risk that voters whose ballots were received close to November 6 would not receive notice of

insufficient identification to respond by the November 9 deadline under § 3146.8(h)(5). As a result, the Secretary issued a guidance document (the “Guidance”) instructing that voters whose ballots reached the county board during the extended receipt period created by *Pennsylvania Democratic Party*—*i.e.*, between 8:00 p.m. on November 3 and 5:00 p.m. on November 6—could submit proof of identification “by the sixth calendar day following the canvassing, or on or before Thursday, November 12.”²

On November 4, 2020—the day after Election Day—Petitioners filed this lawsuit against the Secretary and each county board of election challenging the Guidance. Petitioners ask this Court to enjoin Respondents from “counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9.” Petition at 14.³

² Pa. Dep’t of State, Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 p.m. on Tuesday, November 3, 2020 and Before 5:00 p.m. on Friday, November 6, 2020 (Nov. 1, 2020), <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf>.

³ Petitioners also request that Respondents be enjoined “from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after *November 8*.” Petition at 13 (emphasis added). Proposed Intervenor-Respondent assumes this is a typographical mistake. There is no basis whatsoever to provide that relief. Putting the Guidance at issue here aside, 25 P.S. § 3146.8(h) unquestionably allows voters to submit proof of identification as late as November 9. Petitioners offer no reason why this Court should *shorten* that deadline.

LEGAL STANDARD

Petitioners seek a “preliminary, special, and/or permanent” injunction. Petition at 3. Pennsylvania courts treat special and preliminary injunctions generally “interchangeably,” and the standards applicable to such motions are the same. *See E. Stroudsburg Univ. v. Hubbard*, 591 A.2d 1181, 134 n.5 (Pa. Commw. 1991). “Three criteria have been established” for such relief, “which, as a harsh and extraordinary remedy, is to be granted only when and if each [of the following] criteria ha[ve] been fully and completely established”: (1) “the preliminary injunction must be necessary to prevent immediate and irreparable harm which could not be compensated for by damages,” (2) “greater injury would result from the denial of the preliminary injunction than from the granting of it,” and (3) “it would operate to restore the parties to the status quo as it existed prior to the alleged wrongful conduct.” *Comm. of Seventy v. Albert*, 381 A.2d 188, 189 (Pa. Commw. 1977). The Pennsylvania Supreme Court has set significant limitations on a court’s ability to issue such an injunction. For example, one “should *never* be awarded except when the rights of the plaintiff are clear.” *New Castle Orthopedic Assoc. v. Burns*, 392 A.2d 1383, 1385 (Pa. 1978) (emphasis added) (quoting *Herman v. Dixon*, 141 A.2d 576, 577 (Pa. 1958)). And courts must also consider the public interest: if the injunction will have an “adverse effect upon the public interest,” “it should not be granted.” *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass’n*, 667 A.2d 5, 7 (Pa.

1995) (quoting *Philadelphia v. District Council 33*, 535 A.2d 231 (Pa. Commw. 1987), *aff'd* 598 A.2d 256 (Pa. 1991)).

As for a permanent injunction, the same considerations apply, but the threshold requirements are “that (1) the right to relief is clear, (2) there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and (3) greater injury will result in refusing rather than granting the relief requested.” *Big Bass Lake Comty. Ass’n v. Warren*, 23 A.3d 619, 626 (Pa. Commw. 2011).

ARGUMENT

I. Petitioners lack standing to assert their claims.

Petitioners lack standing. To invoke this Court’s powers, Petitioners must be “aggrieved,” which requires them to establish a “substantial, direct, and immediate interest in the matter.” *Markham*, 136 A.3d at 140; *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659–60 (Pa. 2005). But Petitioners have made no attempt to explain how the Guidance has injured, or will injure, them. As a result, they fail to show a substantial, direct, or immediate interest in these issues. *Markham*, 136 A.3d at 140. Petitioners’ lack of standing is dispositive: not only should the relief they seek be denied, but their Petition should also be dismissed. *Mifflin Cty. Sch. Dist. v. Monsell*, 504 A.2d 1357, 1359 (Pa. Commw. 1986) (reversing injunction because applicant “ha[d] suffered no injury”); *Pittsburgh Palisades Park*, 888 A.2d at 663 (dismissing petition due to lack of standing).

Even if Petitioners attempted to prove their standing, they would not have been able to succeed. Petitioners' claim demonstrates that, in this suit, Petitioners have no "substantial" interest that "surpasses the common interest of all citizens in procuring obedience to the law." *Pittsburgh Palisades Park, LLC*, 888 A.2d at 660 (quoting *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). For example, they allege in conclusory fashion that they "would suffer" a "substantial injury and immediate irreparable harm . . . if Respondents are permitted to violate the laws of the Commonwealth of Pennsylvania." Petition at 13. But a claim that "the law . . . has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that cannot give rise to a cognizable injury. *Lance v. Coffman*, 549 U.S. 437, 442 (2007); *see also Markham*, 136 A.3d at 140.⁴ In Pennsylvania, "it is hornbook law that a person whose interest is common to that of the public generally . . . lacks standing to attack the validity" of state action. *Mixon v. Commonwealth*, 759 A.2d 442, 452 (Pa. Commw. 2000). As a result, a "generalized interest[] in the conduct of government common to the general

⁴ Curiously, Petitioners claim to have "Article III standing." Petition at 3–4. Article III standing is a federal constitutional requirement that applies to federal, not state, courts. While the Pennsylvania Supreme Court has explained that "federal decisions on standing" are "helpful" in determining whether a party has a cognizable injury, *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 n.5 (Pa. 2009), Petitioners' unsupported and conclusory claim of Article III standing fails to establish any "substantial, direct, and immediate interest in the matter," *Markham*, 136 A.3d at 140, and thus does not advance their cause.

citizenry” fails to “satisfy the requirements of standing.” *Markham*, 136 A.3d at 140.

Petitioners’ status as a presidential campaign and a national political committee does not resolve this defect. Petitioner Donald J. Trump for President, Inc. (the “Trump Campaign”) appears as the principal committee for the re-election campaign of Donald J. Trump. Petition at 3. But the Trump Campaign does not allege that, or explain how, providing mail-in voters additional time to provide missing proof of identification would harm President Trump’s electoral prospects or any other interest it may hold as a political campaign. It does not assert, for example, that the voters who would be disenfranchised by the requested injunction are more likely to vote against President Trump than for him.

Similarly, Petitioner Republican National Committee (the “RNC”) brings this action “for itself, the Republican Party, all of its members, all registered Republican voters, and all nominated Republican candidates in the November 3, 2020 General Election in the Commonwealth of Pennsylvania,” *id.* at 4–5, but it fails to explain how any of those groups—the party, voters, or candidates—would be harmed by the Guidance. The crux of Petitioners’ barebones allegations is that Petitioners and those they represent have been injured by residing in Pennsylvania and being subject (like all Pennsylvania residents) to the Guidance. That alone cannot create standing; if it did, it would turn long-held principles of standing on their head.

To the extent Petitioner RNC implies that its voters are injured by other

eligible Pennsylvanians’ participation in the election, that too is a generalized grievance that cannot create standing. Any voter could make this claim in any election. When voters seek “relief that no more directly and tangibly benefits [them] than it does” any other voter, they lack standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574 (1992); *see also Martel v. Condos*, --- F. Supp. 3d ---, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (explaining “[i]f every voter suffers the same incremental dilution of the franchise” caused by the participation of certain voters, “then these voters have experienced a generalized injury”); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (finding plaintiffs’ claims that others might participate in the election as result of the challenged law “amount to general grievances that cannot support a finding of particularized injured as to [p]laintiffs” (internal quotation marks omitted)); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (reaching same conclusion because plaintiffs’ claims “may be conceivably raised by any Nevada voter”); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (adopting magistrate judge’s finding that “complaints of undermined confidence and potential vote dilution are nothing but a generalized grievance about government, complaining that an official should be required to follow the law”).

Separately, Petitioners also fail to show or explain how they have a “direct”

or “immediate” interest in the outcome of this case. A “direct” interest requires “a showing that the matter complained of ‘caused harm to the party’s interest’”—in other words, “a causal connection between the harm and the violation of the law.” *Pittsburgh Palisades Park, LLC*, 888 A.2d at 660 (quoting *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003)). And an “immediate” interest exists only “if the causal connection is not remote or speculative.” *Id.* The Petition offers no description of a “causal connection” between the Secretary’s Guidance and the harm Petitioners claim to suffer, much less a connection that is “not remote or speculative.” *Id.* At most, Petitioners make the wildly speculative, non-sensical, and unsupported arguments that (1) the Guidance might “create a high risk of jeopardizing the integrity of the November 3, 2020 election” *simply because it allows voters to prove their identity*, and (2) the Guidance “*may*” lead to a slight delay in processing some votes. Petition at 15–16 (emphases added).⁵ These are not the sort of “direct,” “immediate,” and non-speculative interests that give rise to standing in Pennsylvania. The Court should deny Petitioners’ request for relief.

II. Petitioners are not entitled to the injunctive relief they seek.

Although the tests for preliminary and permanent injunctive relief are framed

⁵ Indeed, Petitioners’ vague concern of “delay” is incompatible with their own actions in asking other courts to halt ballot counting and delay certification of the Commonwealth’s election results. Any delay in vote counting or certification is the result of Petitioners’ lawsuits, not the actions of the Secretary.

slightly differently, they both involve three core elements requiring the movant to show (1) it would be irreparably injured, or would suffer an injury that could not be compensated at law, without injunctive relief; (2) a clear right to relief on the merits; and (3) the balance of harms weigh in its favor. *Compare New Castle Orthopedic Assoc.*, 392 A.2d at 1385 (preliminary injunction); *with Big Bass Lake Comty. Ass’n*, 23 A.3d at 626 (permanent injunction). Because Petitioners fail to make these showings, their request for injunctive relief should be denied.

A. Petitioners have not identified an irreparable injury.

Petitioners first fail to show that they will be irreparably harmed—or, for the permanent injunction context, that they will suffer an injury that cannot be adequately compensated at law—if the Court denies their request for injunctive relief. Most obviously, they fail to show any injury at all. As discussed above, the Petition simply fails to explain how, or why, Petitioners would be injured if the Guidance is not enjoined.

To the extent Petitioners claim that Pennsylvania is experiencing delays in “declar[ing] the results of the election,” *see* Petition at 8, 11, they fail to show that the Guidance has contributed, or will contribute, to that delay. Instead, the Guidance merely gives voters three additional days to provide proof of identification, without “requiring alteration of the subsequent canvassing and reporting dates necessary for the Secretary’s final reporting of the election results.” *Pa. Democratic Party*, 2020

WL 5554644, at *18. Perhaps more importantly, Petitioners fail to show (or even argue) that they have been injured by any purported delays. A party is not injured simply because it must wait “days” for the Commonwealth to count the votes in an election. Petition at 12.

Because Petitioners fail to demonstrate any irreparable harm, the requested injunction must be denied. *New Castle Orthopedic Assocs.*, 392 A.2d at 1385.

B. Petitioners have not shown a clear right to relief.

Petitioners cite no case law in support of their contention that the Secretary’s extension of the voter ID deadline is unlawful. In fact, they ignore the fact that the Pennsylvania Supreme Court’s decision in *Pennsylvania Democratic Party* requires the Guidance that Petitioners challenge here. That case, like the present one, involved a three-day extension of a statutory deadline that was necessary to spare voters from disenfranchisement in the midst of an unprecedented natural disaster. *Pa. Democratic Party*, 2020 WL 5554644, at *17–18. In concluding that an extension was warranted, the *Pennsylvania Democratic Party* Court considered and rejected the same arguments Petitioners recycle here. Petitioners thus fail to show a clear right to relief, which dooms their request for an injunction. *See New Castle Orthopedic Assoc.*, 392 A.2d at 1385 (noting that injunctive relief “should *never* be awarded except when the rights of the plaintiff are clear.” (emphasis added) (quoting *Herman*, 141 A.2d at 577))).

In *Pennsylvania Democratic Party*, the Pennsylvania Supreme Court considered an as-applied challenge to the enforcement of the Election Code’s 8:00 p.m. receipt deadline for mail-in ballots in light of the COVID-19 pandemic and systemic delays in U.S. Postal Service operations. 2020 WL 5554644, at *10. In addressing that constitutional challenge, the Court emphasized “that the Free and Equal Elections Clause of the Pennsylvania Constitution requires that ‘all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth, and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.’” *Id.* at *17 (quoting *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018)). To effectuate these principles in the context of the pandemic, the Court extended the mail-in ballot deadline by three days. *Id.* at *18.

Importantly, while the Court noted that its decision would “*not* require[e] alteration of the . . . subsequent canvassing and reporting dates necessary for the *Secretary’s* final reporting of the election results,” *id.* at *18 (emphasis added), it left open the possibility that other interim deadlines for *voters* might require adjustment. After all, the Court’s decision to extend the ballot-receipt deadline was based on the need to prevent “disenfranchisement of voters” from the breakdown of the electoral process “under the strain of COVID-19 and the 2020 Presidential

Election.” *Id.* To the extent that other deadlines similarly risk disenfranchisement, the Court’s discussion indicates they must give way as well.

As relevant here, by extending the deadline to receive mail-in ballots to November 6, the Court’s remedy raised the prospect that some mail-in voters would not be notified until that date—or even later, depending on when those ballots are canvassed—that their ballots were rejected due to a lack of proof of identification. But 25 P.S. § 3146.8(h)(5) gives voters an explicit opportunity to submit identification in such circumstances. To preserve this opportunity, the Secretary extended the deadline for voters to submit proof of identification by three days, the same extension as that ordered by the Court in *Pennsylvania Democratic Party*.

Resisting this expected (and sanctioned) change in deadlines, Petitioners advance the same argument the Pennsylvania Supreme Court already rejected, attempting to characterize the Secretary’s guidance as “re-writ[ing] the Election Code.” Petition at 2. But as the Court in *Pennsylvania Democratic Party* explained, extending such deadlines in the present circumstances is not “rewriting” the Code, but rather a necessary action to prevent “infringement of electors’ right to vote.” 2020 WL 5554644, at *16. By mirroring the three-day extension provided in *Pennsylvania Democratic Party*, the Guidance aligns the deadline to submit proof of identification with the new deadline set by the Court for receiving mail-in ballots. This adjustment is necessary to provide the statutorily guaranteed right to submit

proof of identification to cure a deficient mail-in ballot.

Because Petitioners fail to show a clear right to the extraordinary relief they seek, they are not entitled to an injunction. *New Castle Orthopedic Assoc.*, 392 A.2d at 1385; *Big Bass Lake Comty. Ass’n*, 23 A.3d at 626.

C. The requested injunction would cause far greater harm than it would prevent.

Petitioners’ request for injunctive relief should be denied on the independent ground that “greater harm [would be] worked by the issuance of this injunction than would result from its denial.” *New Castle Orthopedic Assocs.*, 392 A.2d at 1385; *see also Big Bass Lake Comty. Ass’n*, 23 A.3d at 626. Petitioners’ requested injunction would deny eligible voters their statutory right to cure a failure to provide proof of identification. *See* 25 P.S. § 3146.8(h). Because none of these voters can have their ballots counted unless they provide such identification, there is no risk that the Guidance would result in ineligible voters casting a ballot. All an injunction against the Guidance would accomplish is denying *eligible* voters the right to have their ballots counted. *See United States v. Mosley*, 238 U.S. 383, 386 (1915) (describing as “unquestionable” that the right to vote involves not just “the right to put a ballot in a box,” but also “the right to have one’s vote counted”). This result would be profoundly inequitable.

For the same reason, the requested injunction would significantly harm the public interest. “The public interest . . . favors permitting as many qualified voters

to vote as possible.” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012); *see also, e.g., Pennsylvania Democratic Party*, No. 133 MM 2020, 2020 WL 5554644, at *5 (“[T]he Election Code should be liberally construed so as not to deprive, *inter alia*, electors of their right to elect a candidate of their choice.” (quoting *Perles*, 213 A.2d at 783–84)). Because the injunction that Petitioners request would prevent voters with unquestioned eligibility from participating in this election, it would have a dramatically “adverse effect upon the public interest.” *Sch. Dist. of Wilkinsburg*, 667 A.2d at 7. As a result, “it should not be granted.” *Id.*

CONCLUSION

Petitioners lack standing, they fail to prove the injunction they seek would prevent them irreparable harm, their claims lack merit, and the injunction they seek would cause serious harm to the public interest. The relief requested should be denied and the Petition should be dismissed.

Dated: November 10, 2020

Respectfully submitted,

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**Motion for Admission Pro Hac Vice
Forthcoming*

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ *Adam C. Bonin*

Adam C. Bonin

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 602 MD 2020

DONALD J. TRUMP FOR PRESIDENT, INC., et al.,

Petitioners,

v.

**KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of
Pennsylvania, et al.,**

Respondents.

**RESPONDENT KATHY BOOCKVAR'S BRIEF
SUBMITTED PURSUANT TO NOVEMBER 6, 2020 ORDER**

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I. INTRODUCTION

Nearly seven million Pennsylvanians voted in the 2020 general election—more than in any other election. More than 2.6 million absentee and mail-in ballots were returned. The election occurred in the midst of a global pandemic and mail delays caused by operational changes in the U.S. Postal Service.

The Pennsylvania Supreme Court balanced the fundamental rights of voters against the challenges posed by the pandemic and postal delays and decided as a matter of equity, for purposes of this election only and to fulfill the Pennsylvania Constitution’s guarantee of a free and equal election, the deadline to receive mail-in and absentee ballots delivered by U.S. mail should be extended by three days from 8:00 pm on Tuesday, November 3, 2020 to 5:00 pm on Friday, November 6, 2020. *Pa. Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *18 (Pa. Sept. 17, 2020).

In a last gasp attempt to prevent legitimate votes from being counted, however, Petitioners Donald J. Trump For President, Inc. and the Republican National Committee (referred to collectively herein as “Trump Campaign”) commenced the instant action challenging guidance issued by Respondent Secretary of the Commonwealth Kathy Boockvar that advised county boards that voters whose ballots were received after Election Day should have three additional days to provide proof of identification consistent with the three-day extension in

Pa. Democratic Party v. Boockvar. At issue are only a smaller subset of the already small subset of ballots received by U.S. mail between 8:00 pm on Election Day and 5:00 pm on Friday, November 6, 2020—specifically, only those mail-in and absentee ballots for which proof of identification was not previously provided or could not previously be verified. Consistent with the Election Code requirement that identification for such electors must be received and verified within six days, Secretary Boockvar advised county election boards that electors whose ballots were received by mail during the three-day extension should be allowed six days—until Thursday, November 12—to provide the required proof of identification.

The Secretary’s guidance was necessitated by the Supreme Court’s ruling in *Pa. Democratic Party v. Boockvar* and comports with the election deadlines as modified by that ruling as well as federal law governing provisional balloting and proof of identification. The Trump Campaign’s request for a judicial declaration to the contrary is without merit and should be denied.

II. FACTUAL BACKGROUND

A. Mail-In Voting and Proof of Identification

On October 31, 2019, Governor Wolf signed Act 77 of 2019 (“Act 77”) into law, amending the Election Code to permit, for the first time, no-excuse mail-in voting for all qualified electors. 25 P.S. § 3150.11. Act 77 allowed voters until October 27, 2020, to request a ballot for the November 3, 2020 general election, 25

P.S. § 3150.12a(a), and established a deadline of 8:00 p.m. on Election Day to return voted ballots to county boards of elections, 25 P.S. § 3150.16.

When county boards of elections met to pre-canvass or canvass mail-in and absentee ballots, the boards examined the declarations on the exterior envelopes and compared the information on the ballots—the voter’s name and address—to the lists of voters approved to vote by mail. 25 P.S. § 3146.8(g)(3); 25 P.S. § 3146.2c. If an elector provided proof of identification required to be approved to vote by mail (defined in 25 P.S. § 2602 (z.5)(3) as driver’s license number, last four digits of social security number or other specified identification) and the proof of identification was verified by the county board and the elector’s voter declaration was found to be sufficient, his or her ballot was counted unless previously challenged on the grounds permitted by statute. 25 P.S. § 3146.8(g)(4); 25 P.S. § 3150.12b(a)(2).

The Election Code provides that, when proof of identification was not provided with the application for an absentee or mail-in ballot or could not be verified by the county board, the elector is required to provide proof of identification with the absentee or mail-in ballot, or the ballot will not be counted. 25 P.S. § 3146.2b(d); 25 P.S. § 3150.12b(c). Consistent with the provision on provisional ballots which allows voters to submit proof of identification “within six calendar days following the election,” *see* 25 P.S. § 3050(a.4)(5)(E), the Election

Code affords mail-in and absentee voters six “calendar days following the election” to provide proof of identification, 25 P.S. § 3146.8(h)(2), (3). If proof of identification is received and verified prior to the sixth calendar day following the election, then the ballots may properly be counted. 25 P.S. § 3146.8(h)(2).

B. Letter from the United States Postal Service Warning of Delays

On July 29, 2020, Thomas J. Marshall, General Counsel for the United States Postal Service (“USPS”), mailed a letter to Secretary Boockvar warning that, based on the USPS’s expected delivery times for mail service at the time of the general election, there is a “‘significant risk’ that Pennsylvania voters who submit timely ballot requests will not have sufficient time to complete and return their ballots to meet the Election Code’s received-by deadline.” *Pa. Democratic Party*, 2020 WL 5554644, at *12 (quoting July 29, 2020 letter from USPS General Counsel and Executive Vice President Thomas Marshall). Critically, the letter explained that Pennsylvania’s election law “deadlines for requesting and casting mail-in ballots are incongruous with the USPS’s delivery standards.” *Id.* at *13. “This mismatch [between the USPS’s delivery standards and the Election Code deadlines] creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under [Pennsylvania’s Election Code].” *Id.*

C. *Pa. Democratic Party v. Kathy Boockvar*, 133 MM 2020 (Pa.)

The Pennsylvania Democratic Party and several Democratic candidates (collectively the “Democratic Party”) initiated an action in this Court on July 10, 2020, against Secretary Boockvar and the 67 county boards of elections raising challenges to the mail-in ballot process. Relevant to this matter, the Democratic Party claimed that, in light of the current COVID-19 pandemic and professed delays in mail delivery, the November 3, 2020 deadline violated the Pennsylvania Constitution’s Free and Equal Elections Clause. Pa. Const., art. I, § 5.¹

Recognizing the exigent need to resolve this issue quickly given the impending election date, on August 16, 2020, Secretary Boockvar asked the Pennsylvania Supreme Court to exercise extraordinary jurisdiction over the matter pursuant to 42 Pa. C.S. § 726. The Pennsylvania Supreme Court, after expedited briefing, extended the ballot receipt deadline by three days pursuant to its extraordinary jurisdiction. *Pa. Democratic Party*, 2020 WL 5554644, at *18. The Supreme Court emphasized the unexpected number of requests for mail-in ballots during the June 2, 2020 primary election—1.5 million rather than the expected

¹ The Free and Equal Elections Clause provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right to suffrage.” Pa. Const., art. I, § 5. The Pennsylvania Supreme Court has held that this provision “guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018).

100,000—and the difficulties the COVID-19 pandemic caused for some election boards. *Id.* at **12, 17. “In light of these unprecedented numbers and the near-certain delays that will occur in Boards processing the mail-in applications,” the Supreme Court determined that the timeline built into the Election Code could not be met under the USPS’s delivery standards. *Id.* at *18. Accordingly, pursuant to its “broad authority to craft meaningful remedies when required” in enforcing the Free and Equal Elections Clause, *id.* at *18 (quoting *League of Women Voters*, 178 A.3d at 822), the Supreme Court extended the ballot receipt deadline by three days, until November 6, 2020 at 5:00 pm for this election only. *Id.* at *18 & n.26.

“[T]his proposal * * * requires that all votes be cast by Election Day but does not disenfranchise a voter based upon the absence or illegibility of a USPS postmark that is beyond the control of the voter once she places her ballot in the USPS delivery system.” *Id.* at *13 n.20.

D. Requests for Stay and Petition for Writ of *Certiorari*

The Republican Party of Pennsylvania and State Senators Joseph B. Scarnati and Jake Corman applied to the Pennsylvania Supreme Court to stay its decision pending appeal to the U.S. Supreme Court. The Pennsylvania Supreme Court denied those requests by Order dated September 24, 2020. The Republican Party of Pennsylvania and State Senators Scarnati and Corman then sought a stay from

the U.S. Supreme Court. That application was similarly denied on October 19, 2020.

On October 23, 2020, the Republican Party of Pennsylvania filed a petition for a writ of *certiorari* in the U.S. Supreme Court challenging the three-day extension and a motion for expedited consideration. The motion was denied on October 28, 2020. The Republican Party of Pennsylvania filed an emergency application for an injunction in the U.S. Supreme Court seeking segregation of ballots received by mail between 8:00 pm on Election Day and 5:00 pm on November 6, 2020. On November 6, 2020, Justice Samuel A. Alito, Jr. entered an Order directing county election boards to comply with the guidance that had already issued by the Secretary Boockvar on October 28, 2020 and November 1, 2020 (discussed below), “namely, (1) that all ballots received by mail after 8:00 p.m. on November 3 be segregated . . . and (2) that all such ballots, if counted, be counted separately.”

E. The October 28, 2020 and November 1, 2020 Guidance

In recognition of the litigation pending in the U.S. Supreme Court, the Secretary issued guidance to the county boards of elections on October 28, 2020 advising that ballots received by mail after 8:00 pm on Election Day and before 5:00 pm on Friday, November 6, 2020 should be kept separate and segregated from

all other voted ballots.² County boards were directed to maintain a detailed log of ballots received during this window and not to count the ballots pending further direction. *See* October 28, 2020 Guidance at p. 2. The October 28, 2020 guidance advised that additional guidance would be forthcoming. *Id.* at p. 3.

The Secretary issued additional guidance on November 1, 2020 (“the November 1, 2020 Guidance”) in response to questions concerning canvassing of the segregated ballots.³ The November 1, 2020 Guidance included detailed instruction to county boards with respect to canvassing. Among other things, county boards were advised that it was critically important to maintain accurate records of the disposition of ballots received during this period. R-4. County boards were further advised to count, compute and separately tally the segregated ballots. R-6. And, corresponding with the provision in the Election Code

² *See* “Pennsylvania Guidance for Mail-in and Absentee Ballots Received from the United States Postal Service after 8:00 p.m. on Tuesday, November 3, 2020,” available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/Documents/2020-10-28-Segregation-Guidance.pdf> (last visited November 10, 2020).

³ *See* “Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. on Friday, November 6, 2020,” available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/Canvassing-Segregated-Ballot-Guidance.pdf> (last visited November 10, 2020). The November 1, 2020 Guidance is published in the Stipulated Appendix at R-3 to R-6.

affording voters six days after the election to provide proof of identification, the November 1, 2020 guidance advised that, “[i]f proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.” R-5.

F. Petition for Review in This Action

The Trump Campaign commenced this action on November 4, 2020, seeking a declaratory judgment prohibiting county boards from counting votes cast by absentee and mail-in voters whose proof of identification is not received and verified by November 9, 2020.

III. STATEMENT OF JURISDICTION

This Court has original jurisdiction over the request for declaratory relief in this action under 42 Pa. C.S. § 761(a)(1).

IV. QUESTION PRESENTED

Whether the Supreme Court decision extending the ballot return deadline by three days requires a corresponding three-day extension of the period for electors whose ballots are delivered by U.S. mail and are received between 8:00 pm on November 3, 2020 and 5:00 pm on November 6, 2020 to provide proof of identification?

Suggested Answer: Yes.

V. ARGUMENT

The threshold question posed in this action is whether electors whose ballots are timely cast but received after 8:00 pm on Election Day and before 5:00 pm on November 6, 2020 due to delay in mail delivery are entitled to the same statutory six-day opportunity to provide proof of identification confirming their right to vote. The answer can only be yes.

At issue is 25 P.S. § 3146.8(h)(2) which provides in pertinent part:

For those absentee ballots or mail-in ballots for which proof of identification has not been received or could not be verified[,] [i]f the proof of identification is received and verified ***prior to the sixth calendar day following the election***, then the county board of election shall canvass the absentee ballots and mail-in ballots under this subsection in accordance with [25 P.S. § 3146.8](g)(2).

25 P.S. 3146.8(h)(2) (emphasis added). But for the Supreme Court's decision in *Pa. Democratic Party v. Boockvar*, the deadline for electors to provide proof of

identification would be Monday, November 9, 2020. The Supreme Court decision in *Pa. Democratic Party v. Boockvar*, however, altered “the timeline for the 2020 General Election mail-in ballot process” and extended the received-by deadline by three days to “protect[] voters’ rights” and enforce the Free and Equal Elections Clause. *Pa. Democratic Party v. Boockvar*, 2020 WL 5554644 at *18.

Straightforward application of the Supreme Court’s decision requires a corresponding extension of the proof of identification deadline in 25 P.S. § 3146.8(h)(2). Anything less would deny voters the protection and benefit of the three-day extension ordered by the Supreme Court.

Denying voters the corresponding three days to provide proof of identification would also undermine protections guaranteed by the Help America Vote Act (“HAVA”). HAVA requires county boards to afford voters who are identified as ineligible to vote, but believe themselves to be eligible, to cast a provisional ballot, subject to a proceeding before the county boards to determine whether or not the ballot should be counted. 52 U.S.C. § 21082. In addition, HAVA imposes certain requirements with respect to voter registration and proof of identification requirements for voters who register to vote by mail. 52 U.S.C. § 21083(b). HAVA sets minimum requirements, 52 U.S.C. § 21084, and leaves it to the states to decide specific methods of compliance with HAVA obligations, 52 U.S.C. § 21085.

Pennsylvania implemented HAVA's requirements by, *inter alia*, creating a statutory process whereby voters who vote by provisional ballot or by absentee and later mail-in ballot are allowed an additional six days after an election to provide proof of identification. *See* 25 P.S. § 3050(a.4)(5)(E) (allowing electors who vote by provisional ballot to present proof of identification to county board of elections within six calendar days following the election); 25 P.S. § 3146.8(h)(2) (allowing electors who vote by mail-in or absentee ballot to present proof of identification to county board of elections within six calendar days following the election). To reduce the six-day period for voters whose mail-in or absentee ballots were delivered late through no fault of their own would significantly undermine protections guaranteed by HAVA.

Secretary Boockvar's guidance appropriately harmonizes and gives effect to the ruling in *Pa. Democratic Party v. Boockvar*, the HAVA protections and the corresponding provisions in the Election Code. The Secretary's interpretation of the statutory deadline in light of the three-day extension ordered by the Supreme Court is certainly not clearly erroneous and, as a result, is entitled to "substantial deference" and is to be given "controlling weight." *See Lancaster Cty. v. Pa. Labor Relations Bd.*, 94 A.3d 979, 986 (Pa. 2014) ("[W]ith respect to issues involving the interpretation of a statute, an administrative agency's interpretation is to be given controlling weight unless clearly erroneous."); *Schuylkill Twp. v. Pa.*

Builders Ass'n, 7 A.3d 249, 253 (Pa. 2010) (“This Court gives substantial deference to an agency’s interpretation of a statute the agency is charged with implementing and enforcing.”) (citation and internal quotation marks omitted); *Winslow-Quattlebaum v. Maryland Ins. Grp.*, 752 A.2d 878, 881 (Pa. 2000) (“It is well settled that when the courts of this Commonwealth are faced with interpreting statutory language, they afford great deference to the interpretation rendered by the administrative agency overseeing the implementation of such legislation.”).

The Secretary’s guidance also comports with the “longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Petition of Cioppa*, 626 A.2d 146, 148 (Pa. 1993); *see also In re: Weiskerger Appeal*, 290 A.2d 108, 109 (Pa. 1972) (“Our goal must be to enfranchise and not to disenfranchise.”). The Pennsylvania Constitution guarantees that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5. Elections are free and equal within the meaning of the Constitution when the regulation of the right to exercise the franchise does not deny the franchise itself or make it so difficult as to amount to a denial. *Winston v. Moore*, 91 A. 520, 523 (Pa. 1914). Therefore, election laws are to be “construed liberally in favor of the right to vote.” *Shambach v. Bickhart*, 845 A.2d 793, 798 (Pa. 2003); *Petition of Cioppa*, 626

A.2d at 148 (“[O]ur Election Code should be liberally construed so as not to deprive . . . the voters of their right to elect a candidate of their choice.”). The “goal must be to enfranchise and not to disenfranchise.” *In re Luzerne County Return Bd.*, 290 A.2d 108, 109 (Pa. 1972). The Secretary’s guidance is faithful to and gives full effect to this policy.

For all these reasons, the Secretary correctly interpreted the decision in *Pa. Democratic Party v. Boockvar* as requiring a three-day extension of the proof of identification deadline. Accordingly, the Trump Campaign fails to establish a right to the declaratory relief sought in the Petition for Review and judgment on the merits should be entered in favor of the Secretary.

Beyond failing on the merits, the Petition for Review is marked by other fatal defects. For one thing, the Petition alleges, at best, a hypothetical situation where proof of identification for late-delivered ballots might be received between November 9 and November 12 and, as a result, there is no concrete case or controversy as required under the Declaratory Judgments Act. *See Rendell v. Pa. State Ethics Comm’n*, 938 A.2d 554, 560-61 (Pa. Cmwlth. 2007) (“issues [that] depend upon the unfolding of hypothetical facts that may never occur . . . do not present this Court with a concrete case or controversy” under the Declaratory Judgments Act). In addition, the Trump Campaign does not allege that allowing voters to provide proof of identification between November 9 and November 12

will result in concrete harm to a political prospect or any other interest. The Petition for Review is merely a generalized complaint about the correctness of the Secretary's guidance and, as a result, fails to satisfy the requirements of standing. *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016) ("generalized grievance about the correctness of governmental conduct" is insufficient to confer standing). Further, the Trump Campaign unreasonably delayed until after the close of business on November 4 before seeking relief from this Court. To grant the injunctive relief sought by the Trump Campaign now would disadvantage voters who relied on the guidance. *See generally Grey v. Ohio & P.R. Co.*, 1 Grant 412, 413 (1856) ("To entitle the plaintiff to an injunction, he . . . must not be guilty of any improper delay in applying for relief.").

IV. CONCLUSION

For the reasons above, the Petition for Review fails to allege a basis for declaratory relief and should be dismissed with prejudice.

Dated: November 10, 2020

Respectfully submitted,

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Attorneys for Respondent, Kathy Boockvar,
Secretary of the Commonwealth of Pennsylvania

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Daniel T. Brier
Daniel T. Brier

Date: November 10, 2020

PROOF OF SERVICE

I, Daniel T. Brier, hereby certify that I am this day serving the foregoing Supplemental Brief upon all counsel of record via PACFile eService, which service satisfies the requirements of Pa.R.A.P. 12.

Date: November 10, 2020

/s/ Daniel T. Brier

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**DONALD J. TRUMP FOR
PRESIDENT, INC., and REPUBLICAN
NATIONAL COMMITTEE,**

Petitioners,

v.

**KATHY BOOCKVAR, in her capacity
as Secretary of the Commonwealth of
Pennsylvania, et al.,**

Respondents.

No. 602 MD 2020

STIPULATED RECORD

Pursuant to the Order dated November 6, 2020, Petitioners and Respondent Boockvar jointly submit the following as the stipulated record:

1. Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail After 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. on Friday, November 6, 2020.
2. November 5, 2020 Email Message on Behalf of Secretary Boockvar to County Election Officials.
3. November 1,2 020 Email Messages to County Election Directors.

1

TLP: WHITE



**CANVASSING SEGREGATED MAIL-IN AND CIVILIAN
ABSENTEE BALLOTS RECEIVED BY MAIL AFTER 8:00 P.M. ON
TUESDAY, NOVEMBER 3, 2020 AND BEFORE 5:00 P.M. ON
FRIDAY, NOVEMBER 6, 2020**

Date: November 1, 2020

Version: 1.0

On October 28, 2020, the Department of State issued guidance related to the segregation of mail-in and civilian absentee ballots received by mail after 8:00 P.M. on Tuesday November 3, 2020 and before 5:00 P.M. on Friday, November 6, 2020. In doing so, the Department of State indicated it would update the county boards of elections on how to canvass those segregated ballots. That guidance follows:

1. All directions in the guidance issued on October 28, 2020 concerning the segregation and logging of ballots received during this defined post-election period continue to apply. Specifically, mail-in and civilian absentee ballots received by mail after 8:00 P.M. on November 3 and before 5:00 P.M. on November 6 shall be identified and segregated from all other voted ballots and shall be maintained, preserved and appropriately logged as directed in the October 28, 2020 guidance.
2. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the ballots are canvassed.
3. By statute, no challenges by authorized representatives or any third party are permitted during canvass of the mail-in and absentee ballots.
4. To facilitate transparency and ensure that all validly cast ballots are counted, it is critically important that county boards maintain accurate records of the disposition of ballots received during this period as directed below.

Canvass Procedures

- Guidance concerning mail-in and absentee ballots previously provided by the Department, including the guidance issued on August 19, 2020, September 11, 2020, and September 28, 2020, continues to apply unless otherwise specified herein.
- The county board of elections shall canvass segregated absentee and mail-in ballots received after 8:00 P.M. on Tuesday November 3, 2020, and before 5:00 P.M. on Friday, November 6, 2020 as soon as possible upon receipt of the ballots and within the period specified by law for the canvass. The canvass meeting shall continue until all segregated absentee and mail-in ballots have been canvassed.
- The county board of elections shall examine the voter declaration on each envelope to ensure that it is executed and signed and verify that the voter's name appears on the approved list of mail-in and absentee voters.
- The county board of elections should set aside and should not open or count any of the following:
 - Ballots cast by any voter who died prior to the opening of the polls on November 3, 2020.
 - Ballots containing a postmark that is after November 3, 2020.
 - Ballots with a missing or illegible postmark containing a voter declaration that is dated after November 3, 2020.

- Ballots (whenever postmarked) received by mail after 5:00 P.M. on Friday, November 6, 2020.
- Additionally, the county board of elections should not open or count any of the following specific types of ballots pending further review as follows:
 - If proof of identification for an absentee or mail-in voter was not received or could not be verified, the ballot should not be counted unless the elector provides proof of identification that can be verified by the county board by the sixth calendar day following the canvassing, or on or before Thursday, November 12.
 - For ballots of voters whose applications were challenged prior to the challenge deadline (5:00 P.M. on Friday, October 30, 2020), those ballots should not be counted pending completion of the challenge procedure in the Election Code. Ballot applications can only be challenged on the basis that the applicant is not qualified to vote. Ballots associated with applications timely challenged on this basis must be placed in a secure, safe, and sealed container until the board of elections schedules a formal hearing on the challenged ballots. The time set for the hearing shall be within three (3) days after November 6. The hearing procedure shall comply with the Election Code and shall be the same procedure for challenged ballots received prior to 8:00 P.M. on Tuesday, November 3, 2020.
- Other than ballots falling into one of the categories set forth above, mail-in and civilian absentee ballots that comply with the Election Code and the Department's prior guidance shall be canvassed as follows:
 - Ballots with a postmark on or before November 3, 2020 are valid and must be counted.
 - Ballots that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, are presumed to have been mailed by Tuesday, November 3, 2020, and are valid and must be counted, unless a preponderance of the evidence demonstrates that the ballot was mailed after November 3, 2020.
 - County boards of elections are instructed to maintain separate counts for each of the following categories of ballots: (i) ballots with a postmark on or before November 3, 2020 which are counted; (ii) ballots without a postmark (or with an illegible postmark) which are presumed to have been mailed prior to Election Day and which are counted; and (iii) ballots without a postmark (or with an illegible postmark) which are determined by a preponderance of the evidence to have been mailed after Election Day and which are not counted.
- Consistent with the Department's prior guidance, county boards of elections are instructed to set aside any ballots that lack the inner secrecy envelope and any ballots in

secrecy envelopes that contain any text, mark, or symbol which reveals the identity of the voter, the voter's political affiliation, or the voter's candidate preference.

- The county boards of elections shall count, compute, and separately tally the ballots approved for canvassing. These separate ballot tallies shall distinguish between: (i) ballots counted with a postmark prior to November 3, 2020 and (ii) ballots counted with an illegible or no postmark that were presumed to have been mailed on or before November 3.
- Counties shall maintain in a safe and secure location all ballots and ballot envelopes that are canvassed pursuant to this guidance.

Version	Date	Description
1.0	11.1.2020	Initial document release

2

From: Marks, Jonathan
To: Marks, Jonathan
Bcc: Adams - Crouse, Angie; Allegheny - Vove, David; Armstrong - Kuznik, MaryBeth; Armstrong - Poole, Aaron; Beaver - Mandity, Dorene; Bedford - Brown, Debra; Bedford - Ferguson, Andrea; Berks - Barsoum, Karen; Berks - Schnee, Chad; Blair - Clapper, Virginia; Blair - Seymour, Sarah; Bradford - Smithkors, Renee; Bucks - Freitag, Thomas; Bucks - Gale, Kelly E.; Bucks - Harvie, Robert J.; Bucks - Humphrey, Gail; Bucks - Miller, Jennifer; Bucks - VanderKam, Jessica; Butler - Herrit, Melissa; Butler - McCurdy, Chantell; Butler - Sheasley, Aaron; Cambria - Crowl, Shirley; Cameron - Lupro, Misty; Cameron - Munz, Brenda; Carbon - Dart, Lisa; Centre - McKinley, Joyce; Centre - Neidig, Jodi; Centre - Stefanko, Tisha; Chester - Barsamian, Alexis; Chester - Turner, William; Clarion - Callihan, Cindy; Clearfield - Bumbarger, Donna; Clearfield - Graham, Dawn E.; Clinton - Boileau, Maria J.; Columbia - Kara, Thea; Columbia - Repasky, Matthew; Crawford - Chatfield, Gina; Crawford - Little, Rebecca; Cumberland - Orris, Megan; Cumberland - Salzarulo, Bethany; Dauphin - Feaser, Gerald; Dauphin - Roach, Taryll; Dauphin - Spackman, Chris; Delaware - Byrne, Jim; Delaware - Hagan, Lauren; Delaware - Jackson, Marianne; Delaware - Lawrence, Gerry; Delaware - Lunkenheimer, Ashley; Delaware - Parks, Manly; Delaware - Savage, Jim; Delaware - Winterbottom, Crystal; Elk - Frey, Kim; Erie - Fernandez, Tonia; Erie - Smith, Doug; Fayette - Blosser, Larry; Fayette - Guthrie, Billie Jo; Forest - Hitchcock, Jean Ann; Franklin - Aines, Jennie M.; Franklin - Aines, Jennie M.; Franklin - Hart, John A.; Fulton - Beatty, Lisa; Fulton - Hess, Patty; Fulton - McConahy, Lisa M.; Fulton - Mellott, Denise; Greene - Snyder, Judy; Huntingdon - Fellman, Heather; Huntingdon - Thompson, Tammy; Indiana - Maryal, Robin; Indiana - Streams, Debra; Jefferson - Lupon, Karen; Juniata - Weyrich, Eva; Lackawanna - Medalis, Marion; Lancaster - Skilling, Diane; Lancaster - Wenger, Randall; Lawrence - Ed Allison; Lebanon - Anderson, Michael L.; Lebanon - Sohn, Jo-Ellen; Lehigh - Benyo, Timothy A.; Lehigh - Gordian, Diane; Lehigh - Harkins, Terry; Luzerne - Parsnik, Dave; Luzerne - Watchilla, Shelby; Lycoming - Lehman, Forrest; Lycoming - Shuman, Jill; McKean - Frey, Linda; McKean - Pratt, Lisa M.; Mercer - Hall, Thad; Mifflin - Powell, Pamela; Monroe - May-Silfee, Sara; Montgomery - Bonner, Tom; Montgomery - Dean, Francis; Montgomery - John Marlatt; Montgomery - Macekura, Matt; Montgomery - Proletto, Sharon; Montgomery - Sisler, Karley; Montgomery - Soltysiak, Lee; Montour - Brandon, Holly A.; Montour - Dyer, Darlis; Montour - Woodruff, Theresa; Northampton - Cozze, Amy; Northampton - Hess, Amy; Northumberland - McCarthy, MaryRose; Northumberland - Savidge, Nathan; Northumberland - Shaffer, Caleb; Perry - Delancey, Bonnie L.; Perry - Shrawder, Deb; Philadelphia - Bluestein, Seth; Philadelphia - Custodio, Nick; Philadelphia - Deelev, Lisa; Philadelphia - Dietz, Garrett; Philadelphia - Dowling, Tim; Philadelphia - Driscoll, Joseph; Philadelphia - Hurdle, Nakea; Philadelphia - Irving, Greg; Philadelphia - Lynch, Joe; Philadelphia - Richardson, Kevin; Philadelphia - Schmidt, Al; Philadelphia - Vito, Richard; Pike - Manzoni, Nadeen; Potter - Lewis, Sandra; Schuylkill - Gricoski, Albert; Schuylkill - Marmas, Chrissy; Schuylkill - Matz, Connor; Snyder - Bilger, Debbie; Snyder - Guver, Stacy; Snyder - Nace, Patricia; Somerset - Pritts, Tina; Sullivan - Doyle, Francine; Sullivan - Verelst, Hope; Susquehanna - Rudock, Macy; Tioga - Whipple, Penny; Union - Katherman, Gregory A.; Union - Radel, Glenda; Union - Zerbe, Kim; Venango - Backer, Sabrina; Venango - Bailey, Melanie; Venango - Kirkwood, Jamie; Warren - Rivett, Lisa; Washington - Ostrander, Melanie R.; Wayne - Furman, Cindy; Westmoreland - Sebastiani, JoAnn; Wyoming - Crawford, Mason; Wyoming - Kellett, Florence; York - Ulrich, Steve; agray@juniataco.org; aharding@clintoncountypa.com; alosey@cameroncountypa.com; awebster@blairco.org; bdallara@bedfordcountypa.org; berb@blairco.org; bhuffman@co.forest.pa.us; 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 thenry@wycopa.org; tphilips@snydercounty.org; walkerg@co.somerset.pa.us; Boockvar, Kathryn; CCAP - Sage,
 Michael; Darr, Gregory; Datesman, Breanna; Degraffenreid, Veronica; Farrell, Marc; Gates, Timothy; Gruber,
 Kayla; Hartzell, John; Humphrey, Laura; Kotula, Kathleen; Latanishen, Steve; Lawson, Tiffany; Lisa - CCAP
 Schaefer (Ischaefer@pacounties.org); Lyon, Ellen; Moser, Michael; Murren, Wanda; Myers, Jessica; Neely,
 Samantha - CCAP; Parker, Scott; Robinson, Samuel; ST-BCEL; Stevens, Sari; Walls-Lavelle, Jessica; Wills IV,
 Victor; Yabut, Danilo

Subject: URGENT: Commonwealth Court Order re Segregation of Ballots
Date: Thursday, November 5, 2020 3:13:00 PM
Attachments: image001.jpg
 Order (00516477xBF28F).pdf
Importance: High

Dear County Election Officials.

On behalf for Secretary Kathy Boockvar, I am forwarding you the attached Order issued today by the Commonwealth Court of Pennsylvania related to the additional segregation of ballots requiring ID verification.

Please review and discuss with your solicitor ASAP.

Kind regards,

Jonathan M. Marks
 Deputy Secretary for Elections & Commissions
 Pennsylvania Department of State
 302 North Office Building | Harrisburg, PA 17120
 ☎ 717.783.2035 📠 717.787.1734
 ✉ jmarks@pa.gov



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald J. Trump For
President, Inc.; and
Republican National Committee,
Petitioners

v.

No. 602 M.D. 2020

Kathy Boockvar, in her capacity
as Secretary of the Commonwealth of
Pennsylvania; Adams County Board of
Elections; Allegheny County Board of
Elections; Armstrong County Board of
Elections; Beaver County Board of
Elections; Bedford County Board of
Elections; Berks County Board of
Elections; Blair County Board of
Elections; Bradford County Board of
Elections; Bucks County Board of
Elections; Butler County Board of
Elections; Cambria County Board of
Elections; Cameron County Board of
Elections; Carbon County Board of
Elections; Centre County Board of
Elections; Chester County Board of
Elections; Clarion County Board of
Elections; Clearfield County Board of
Elections; Clinton County Board of
Elections; Columbia County Board of
Elections; Crawford County Board of
Elections; Cumberland County Board of
Elections; Dauphin County Board of
Elections; Delaware County Board of
Elections; Elk County Board of
Elections; Erie County Board of
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Elections; Franklin County Board of
Elections; Fulton County Board of
Elections; Greene County Board of
Elections; Huntingdon County Board of
Elections; Indiana County Board of

Elections; Jefferson County Board of	:
Elections; Juniata County Board of	:
Elections; Lackawanna County Board of	:
Elections; Lancaster County Board of	:
Elections; Lawrence County Board of	:
Elections; Lebanon County Board of	:
Elections; Lehigh County Board of	:
Elections; Luzerne County Board of	:
Elections; Lycoming County Board of	:
Elections; McKean County Board of	:
Elections; Mercer County Board of	:
Elections; Mifflin County Board of	:
Elections; Monroe County Board of	:
Elections; Montgomery County Board of	:
Elections; Montour County Board of	:
Elections; Northampton County Board of	:
Elections; Northumberland County Board of	:
Elections; Perry County Board of	:
Elections; Philadelphia County Board of	:
Elections; Pike County Board of	:
Elections; Potter County Board of	:
Elections; Schuylkill County Board of	:
Elections; Snyder County Board of	:
Elections; Somerset County Board of	:
Elections; Sullivan County Board of	:
Elections; Susquehanna County Board of	:
Elections; Tioga County Board of	:
Elections; Union County Board of	:
Elections; Venango County Board of	:
Elections; Warren County Board of	:
Elections; Washington County Board of	:
Elections; Wayne County Board of	:
Elections; Westmoreland County Board of	:
Elections; Wyoming County Board of	:
Elections; and York County Board of	:
Elections,	:
Respondents	:

ORDER

AND NOW this 5th day of November, 2020, upon consideration of
Petitioners' Application for Special Relief in the Form of a Special, Preliminary,

and/or Permanent Injunction to prohibit Respondents from permitting absentee and mail-in voters an opportunity to provide missing proof of identification on or after November 9, 2020, and to prohibit Respondents from counting any absentee and mail-in ballots of voters whose proof of identification was not received and verified by November 9, 2020, it is hereby ORDERED as follows:

1. To maintain the *status quo ante* pending the disposition of the merits of Petitioners' Petition for Review in the Nature of a Complaint in Equity, the county boards of elections shall segregate ballots for which identification is received and verified on November 10, 11, and 12, 2020, from ballots for which identification is received and verified on or before November 9, 2020.

2. This segregation of ballots is in addition to the segregation of ballots received after 8:00 p.m. November 3, 2020, and before 5:00 p.m. November 6, 2020. *See Republican Party of Pennsylvania v. Kathy Boockvar, Secretary of Pennsylvania, et al.*, No. 20-542, 592 U.S. ____ (October 28, 2020) (order denying Motion to Expedite Consideration of Petition for Writ of Certiorari) (Statement of Alito, J.).

3. The segregated ballots for which identification is received and verified on November 10, 11, and 12, 2020, shall not be counted until further order of this Court.

4. This special injunction will dissolve upon entry of this Court's final order on the Petition for Review in the Nature of a Complaint in Equity.

5. In lieu of amending the November 1, 2020 Guidance, the Secretary of the Commonwealth, Kathy Boockvar, shall immediately transmit a copy of this Order to all county boards of elections.


MARY HANNAH LEAVITT, President Judge

Certified from the Record

NOV 05 2020

And Order Exit

3

From: [Marks, Jonathan](#)
To: [Marks, Jonathan](#)
Bcc: [Boockvar, Kathryn](#); [CCAP - Sage, Michael](#); [Darr, Gregory](#); [Datesman, Breanna](#); [Degraffenreid, Veronica](#); [Farrell, Marc](#); [Gates, Timothy](#); [Gruber, Kayla](#); [Hartzell, John](#); [Humphrey, Laura](#); [Kotula, Kathleen](#); [Latanishen, Steve](#); [Lawson, Tiffany](#); [Lisa - CCAP Schaefer \(lschaefer@pacounties.org\)](#); [Lyon, Ellen](#); [Moser, Michael](#); [Murren, Wanda](#); [Myers, Jessica](#); [Neely, Samantha](#) - [CCAP](#); [Parker, Scott](#); [Robinson, Samuel](#); [ST-BCFL](#); [Stevens, Sari](#); [Walls-Lavelle, Jessica](#); [Wills IV, Victor](#); [Yabut, Danilo](#); [Adams - Crouse, Angie](#); [Allegheny - Voye, David](#); [Armstrong - Kuznik, MaryBeth](#); [Armstrong - Poole, Aaron](#); [Beaver - Mandity, Dorene](#); [Bedford - Brown, Debra](#); [Bedford - Ferguson, Andrea](#); [Berks - Barsoum, Karen](#); [Berks - Schnee, Chad](#); [Blair - Clapper, Virginia](#); [Blair - Seymour, Sarah](#); [Bradford - Smithkors, Renee](#); [Bucks - Freitag, Thomas](#); [Bucks - Gale, Kelly E.](#); [Bucks - Harvie, Robert J.](#); [Bucks - Humphrey, Gail](#); [Bucks - Miller, Jennifer](#); [Bucks - VanderKam, Jessica](#); [Butler - Heritt, Melissa](#); [Butler - McCurdy, Chantell](#); [Butler - Sheasley, Aaron](#); [Cambria - Crowl, Shirley](#); [Cameron - Lupro, Misty](#); [Cameron - Munz, Brenda](#); [Carbon - Dart, Lisa](#); [Centre - McKinley, Joyce](#); [Centre - Neidig, Jodi](#); [Centre - Stefanko, Tisha](#); [Chester - Barsamian, Alexis](#); [Chester - Turner, William](#); [Clarion - Callihan, Cindy](#); [Clearfield - Bumbarger, Donna](#); [Clearfield - Graham, Dawn E.](#); [Clinton - Boileau, Maria J.](#); [Columbia - Kara, Thea](#); [Columbia - Repasky, Matthew](#); [Crawford - Chatfield, Gina](#); [Crawford - Little, Rebecca](#); [Cumberland - Orris, Megan](#); [Cumberland - Salzarulo, Bethany](#); [Dauphin - Feaser, Gerald](#); [Dauphin - Roach, Taryll](#); [Dauphin - Spackman, Chris](#); [Delaware - Byrne, Jim](#); [Delaware - Hagan, Laureen](#); [Delaware - Jackson, Marianne](#); [Delaware - Lawrence, Gerry](#); [Delaware - Lunkenheimer, Ashley](#); [Delaware - Parks, Manly](#); [Delaware - Savage, Jim](#); [Delaware - Winterbottom, Crystal](#); [Elk - Frev, Kim](#); [Erie - Fernandez, Tonia](#); [Erie - Smith, Doug](#); [Fayette - Blosser, Larry](#); [Fayette - Guthrie, Billie Jo](#); [Forest - Hitchcock, Jean Ann](#); [Franklin - Aines, Jennie M.](#); [Franklin - Aines, Jennie M.](#); [Franklin - Hart, John A.](#); [Fulton - Beatty, Lisa](#); [Fulton - Hess, Patty](#); [Fulton - Mconahy, Lisa M.](#); [Fulton - Mellott, Denise](#); [Greene - Snyder, Judy](#); [Huntingdon - Fellman, Heather](#); [Huntingdon - Thompson, Tammy](#); [Indiana - Marvai, Robin](#); [Indiana - Streams, Debra](#); [Jefferson - Lupone, Karen](#); [Juniata - Weyrich, Eva](#); [Lackawanna - Medalis, Marion](#); [Lancaster - Skilling, Diane](#); [Lancaster - Wenger, Randall](#); [Lawrence - Ed Allison](#); [Lebanon - Anderson, Michael L.](#); [Lebanon - Sohn, Jo-Ellen](#); [Lehigh - Benyo, Timothy A.](#); [Lehigh - Gordian, Diane](#); [Lehigh - Harkins, Terry](#); [Luzerne - Parsnik, Dave](#); [Luzerne - Watchilla, Shelby](#); [Lycoming - Lehman, Forrest](#); [Lycoming - Shuman, Jill](#); [McKean - Frev, Linda](#); [McKean - Pratt, Lisa M.](#); [Mercer - Hall, Thad](#); [Mifflin - Powell, Pamela](#); [Monroe - May-Silfee, Sara](#); [Montgomery - Bonner, Tom](#); [Montgomery - Dean, Francis](#); [Montgomery - John Marlatt](#); [Montgomery - Macekura, Matt](#); [Montgomery - Proietto, Sharon](#); [Montgomery - Sisler, Karley](#); [Montgomery - Soltysiak, Lee](#); [Montour - Brandon, Holly A.](#); [Montour - Dyer, Darlis](#); [Montour - Woodruff, Theresa](#); [Northampton - Cozze, Amy](#); [Northampton - Hess, Amy](#); [Northumberland - McCarthy, MaryRose](#); [Northumberland - Savidge, Nathan](#); [Northumberland - Shaffer, Caleb](#); [Perry - Delancey, Bonnie L.](#); [Perry - Shrawder, Deb](#); [Philadelphia - Bluestein, Seth](#); [Philadelphia - Custodio, Nick](#); [Philadelphia - Deeley, Lisa](#); [Philadelphia - Dietz, Garrett](#); [Philadelphia - Dowling, Tim](#); [Philadelphia - Driscoll, Joseph](#); [Philadelphia - Hurdle, Nakea](#); [Philadelphia - Irving, Greg](#); [Philadelphia - Lynch, Joe](#); [Philadelphia - Richardson, Kevin](#); [Philadelphia - Schmidt, Al](#); [Philadelphia - Vito, Richard](#); [Pike - Manzoni, Nadeen](#); [Potter - Lewis, Sandra](#); [Schuylkill - Gricoski, Albert](#); [Schuylkill - Marmas, Chrissy](#); [Schuylkill - Matz, Connor](#); [Snyder - Bilger, Debbie](#); [Snyder - Guver, Stacy](#); [Snyder - Nace, Patricia](#); [Somerset - Pritts, Tina](#); [Sullivan - Doyle, Francine](#); [Sullivan - Vereist, Hope](#); [Susquehanna - Rudock, Macy](#); [Tioga - Whipple, Penny](#); [Union - Katherman, Gregory A.](#); [Union - Radel, Glenda](#); [Union - Zerbe, Kim](#); [Venango - Backer, Sabrina](#); [Venango - Bailey, Melanie](#); [Venango - Kirkwood, Jamie](#); [Warren - Rivett, Lisa](#); [Washington - Ostrander, Melanie R.](#); [Wayne - Furman, Cindy](#); [Westmoreland - Sebastiani, JoAnn](#); [Wyoming - Crawford, Mason](#); [Wyoming - Kellett, Florence](#); [York - Ulrich, Steve](#); [agray@juniataco.org](#); [aharding@clintoncountypa.com](#); [alosev@cameroncountypa.com](#); [awebster@blairco.org](#); [bdallara@bedfordcountypa.org](#); [berb@blairco.org](#); [bhuffman@co.forest.pa.us](#); [bmccclure@co.greene.pa.us](#); [bzimmerman@co.greene.pa.us](#); [cleinbach@countyoferks.com](#); [CLukasevich@carboncounty.net](#); [coogana@co.delaware.pa.us](#); [csoff@co.crawford.pa.us](#); [cyoung@columbia.pa.us](#); [dbaughman@bedfordcountypa.org](#); [dcamp@beavercountypa.gov](#); [dglass@clearfieldco.org](#); [dkmyers@co.armstrong.pa.us](#); [dkovach@columbia.pa.us](#); [dlohr@fayettepa.org](#); [dmellismarseglia@buckscounty.org](#); [dskeller@franklincountypa.gov](#); [eheasley@co.clarion.pa.us](#); [ehenry@co.crawford.pa.us](#); [executive@alleghenycounty.us](#); [flecker@countyofoelkpa.com](#); [fweiderspahn@co.crawford.pa.us](#); [addirolamo@buckscounty.org](#); [geichelberger@ccpa.net](#); [ghartwick@dauphinc.org](#); [gracem@co.delaware.pa.us](#); [hbullers@jeffersoncountypa.com](#); [jcdaghir@countyofoelkpa.com](#); [jfosci@ccpa.net](#); [jhaste@dauphinc.org](#); [jkthierwechter@franklincountypa.gov](#); [jlang@bedfordcountypa.org](#); [jlrenshaw@co.armstrong.pa.us](#); [jmanning@beavercountypa.gov](#); [jmartin@adamscounty.us](#); [jmatson@jeffersoncountypa.com](#); [jmoate@cameroncountypa.com](#); [joshmaxwell@chesco.org](#); [jpisarcik@jeffersoncountypa.com](#); [jsnyder@clintoncountypa.com](#); [jsobel@clearfieldco.org](#); [jtfannery@franklincountypa.gov](#); [jthomas@huntingdoncounty.net](#); [kadahlkemper@eriecountypa.gov](#); [kbarnhardt@countyoferks.com](#); [kboozel@co.butler.pa.us](#); [kgeyer@co.butler.pa.us](#); [lburke@blairco.org](#); [losche@co.butler.pa.us](#); [lreed@cameroncountypa.com](#); [mark@centrecountypa.gov](#); [mbelding@co.greene.pa.us](#); [mclinkod@bradfordco.org](#); [mike@centrecountypa.gov](#); [millerd@bradfordco.org](#); [mkeith@indianacountypa.gov](#); [mkessinger@clintoncountypa.com](#); [mkichline@chesco.org](#); [mkingston@co.forest.pa.us](#); [mmoskowitz@chesco.org](#); [mpartner@juniataco.org](#); [mpries@dauphinc.org](#); [mqually@adamscounty.us](#); [mquesenberry@countyofoelkpa.com](#); [msather@huntingdoncounty.net](#); [msrvera@countyoferks.com](#); [pifabian@co.armstrong.pa.us](#); [pshives@co.fulton.pa.us](#); [RAhner@carboncounty.net](#); [rbunch@co.fulton.pa.us](#); [rgorman@indianacountypa.gov](#); [rznibrowski@franklincountypa.gov](#); [rphiel@adamscounty.us](#); [rridgway@columbia.pa.us](#); [rsnyder@co.forest.pa.us](#); [sdershem@centrecountypa.gov](#); [sdunn@fayettepa.org](#); [shess@indianacountypa.gov](#); [shunt@co.cambria.pa.us](#); [sulsh@co.fulton.pa.us](#); [swalls@huntingdoncounty.net](#); [tamadio@beavercountypa.gov](#); [tchernisky@co.cambria.pa.us](#); [tgraybill@juniataco.org](#); [tscotto@clearfieldco.org](#); [ttharan@co.clarion.pa.us](#); [vdfilippo@ccpa.net](#); [vvcites@fayettepa.org](#); [WayneNothstein@carboncounty.net](#); [wbrosius@co.clarion.pa.us](#); [william.mckain@alleghenycounty.us](#); [wsmith@co.cambria.pa.us](#)

Subject: URGENT UPDATE - Email from DOS re Canvassing Segregated Ballots Received by Mail After Election
Date: Sunday, November 1, 2020 1:42:00 PM
Attachments: [image001.jpg](#)

Canvassing Segregated Ballot Guidance 1.0.pdf

Importance: High

Dear County Election Director,

This email is a follow up to the email and guidance sent to you on Thursday 10/29 regarding the segregation of ballots received by mail after 8pm on Election Day.

Attached you will find the promised further guidance addressing how to pre-canvass and canvass the segregated ballots.

Please let us know if you have any questions. Thank you.

Kind regards,

Jonathan M. Marks
Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov



From: [Marks, Jonathan](#)
To: [Marks, Jonathan](#)
Bcc: [amyzanelli@lehighcounty.org](#); [bames@lebcnty.org](#); [bobelbich@lehighcounty.org](#); [cdertinger@northamptoncounty.org](#); [cdlane@mckeancountypa.org](#); [ceduffy@mckeancountypa.org](#); [chermakc@lackawannacounty.org](#); [clehman@co.lancaster.pa.us](#); [danhartzell@lehighcounty.org](#); [daveharrington@lehighcounty.org](#); [david.pedri@luzernecounty.org](#); [dhartman@montourco.org](#); [domenickd@lackawannacounty.org](#); [dvogler@co.lawrence.pa.us](#); [geoffbrance@lehighcounty.org](#); [jchristy@monroecountypa.gov](#); [igale@montcopa.org](#); [jmklebon@ptd.net](#); [jmoyer@monroecountypa.gov](#); [JoEllenLitz15@comcast.net](#); [jparsons@co.lancaster.pa.us](#); [kholdren@montourco.org](#); [kkodish@mifflinco.org](#); [klawrence@montcopa.org](#); [kym.best@norrycopa.net](#); [lmclure@northamptoncounty.org](#); [Isoltysi@montcopa.org](#); [lspielvogel@co.lawrence.pa.us](#); [marcgrammes@lehighcounty.org](#); [marvrose.mccarthy@norrycopa.net](#); [mboyd@co.lawrence.pa.us](#); [mmconnell@mcc.co.mercer.pa.us](#); [msunderland@mifflinco.org](#); [nathanbrown@lehighcounty.org](#); [notarianni@lackawannacounty.org](#); [percydougherty@lehighcounty.org](#); [phillipsarmstrong@lehighcounty.org](#); [rdagostino@co.lancaster.pa.us](#); [rmirabito@lyco.org](#); [rphillips@lebcnty.org](#); [rpostal@mifflinco.org](#); [samuel.schiccatano@norrycopa.net](#); [sbovd@mcc.co.mercer.pa.us](#); [slaverdure@monroecountypa.gov](#); [smetzger@lyco.org](#); [tfinn@montourco.org](#); [tfkreiner@mckeancountypa.org](#); [tmconigle@mcc.co.mercer.pa.us](#); [tmussare@lyco.org](#); [varkoosh@montcopa.org](#); [zakivasmalls@lehighcounty.org](#); [aewig@snydercounty.org](#); [al.schmidt@phila.gov](#); [ballen@perryco.org](#); [bhayman@pottercountypa.net](#); [bhetherington@co.schuylkill.pa.us](#); [bhoffman@sullivancounty-pa.us](#); [bkafferlin@warren-county.net](#); [bsmith@waynecountypa.gov](#); [bwatson@perryco.org](#); [cabramovic@co.venango.pa.us](#); [csteininger@snydercounty.org](#); [darrell.clarke@phila.gov](#); [dawsonc@co.somerset.pa.us](#); [dchew@co.westmoreland.pa.us](#); [dfenton@sullivancounty-pa.us](#); [DHoke@yorkcountypa.gov](#); [diannone@sullivancounty-pa.us](#); [earnold@susqco.com](#); [ecoolidge@tiogacountypa.us](#); [eking@wycopa.org](#); [qbender@co.schuylkill.pa.us](#); [qcerilli@co.westmoreland.pa.us](#); [qebby@perryco.org](#); [qhalcovage@co.schuylkill.pa.us](#); [qhess@co.schuylkill.pa.us](#); [qorben@pikepa.org](#); [hallam@susqco.com](#); [jreydl@co.washington.pa.us](#); [jcramer@waynecountypa.gov](#); [jeff.eggleson@warren-county.net](#); [jgiebel@pottercountypa.net](#); [jherschel@susqco.com](#); [jkantz@snydercounty.org](#); [jlwheeler@yorkcountypa.gov](#); [jreber@unionco.org](#); [iwadams@waynecountypa.gov](#); [ldeatrich@co.schuylkill.pa.us](#); [lisa.deeley@phila.gov](#); [maggil@co.washington.pa.us](#); [mdulaney@co.venango.pa.us](#); [mhamilton@tiogacountypa.us](#); [michael.decker@phila.gov](#); [michael.quintero.moore@phila.gov](#); [mosterberg@pikepa.org](#); [ngrupp@pottercountypa.net](#); [nick.sherman@co.washington.pa.us](#); [omar.sabir@phila.gov](#); [pam@co.somerset.pa.us](#); [pboop@unionco.org](#); [pheimel@pottercountypa.net](#); [rbunn@tiogacountypa.us](#); [resmith@yorkcountypa.gov](#); [rschmalzle@pikepa.org](#); [rwillbur@wycopa.org](#); [saugustine@co.somerset.pa.us](#); [sbreene@co.venango.pa.us](#); [sguccini@pikepa.org](#); [shines@perryco.org](#); [skertes@co.westmoreland.pa.us](#); [srichards@unionco.org](#); [tdurbin@warren-county.net](#); [thenry@wycopa.org](#); [tphillips@snydercounty.org](#); [walkerg@co.somerset.pa.us](#)
Subject: URGENT UPDATE - Email from DOS re Canvassing Segregated Ballots Received by Mail After Election
Date: Sunday, November 1, 2020 1:45:00 PM
Attachments: [Canvassing Segregated Ballot Guidance 1.0.pdf](#)
[image001.jpg](#)
Importance: High

Dear County Election Director,

This email is a follow up to the email and guidance sent to you on Thursday 10/29 regarding the segregation of ballots received by mail after 8pm on Election Day.

Attached you will find the promised further guidance addressing how to pre-canvass and canvass the segregated ballots.

Please let us know if you have any questions. Thank you.

Kind regards,

Jonathan M. Marks
Deputy Secretary for Elections & Commissions
Pennsylvania Department of State
302 North Office Building | Harrisburg, PA 17120
☎ 717.783.2035 📠 717.787.1734
✉ jmarks@pa.gov

